

**Before the Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Applications of Progeny LMS, LLC)	Public Notice Report No. 6012
for renewal of Multilateration Location)	
and Monitoring Services Economic Area)	File Nos. and Call Signs listed in Report
Licenses)	No. 6012, leading with
)	0004307320 and WPQP865
)	(Full list in Appendix hereto)

To: Office of the Secretary, FCC
Attention: Chief, Wireless Telecommunications Bureau

Reply to Opposition to Petition to Deny^{1/2}

Petitioners hereby submit this reply to the Progeny LM, LLC (“Progeny”) opposition (“Opposition”) to their Petition of the above-captioned Applications³ to renew the above-captioned Licenses. Herein (including in the Past Pleadings incorporated herein), “LMS” and “M-LMS” both mean the Multilateration Location and Monitoring Service, and FCC licenses for said service. As shown herein, the Petition has provided clear facts that Progeny never disclosed to the FCC that it did not exist when Auction No. 21 occurred, that its was not Progeny’s Form

¹ The defined terms used herein have the same meaning that they had in the Petition.

² As explained in Attachment A hereto, Petitioners have been experiencing problems with the ULS online pleading system that are preventing them from filing this Reply electronically via ULS. Therefore, Petitioners will be submitting this Reply via electronic mail to Marlene Dortch, Secretary, and Paul D’Ari in the WTB at the FCC. They will also be filing a copy in WT Docket No. 06-49.

³ Where, as here, a filed pleading is identical as to large numbers of Applications and associated Call Signs, it is more convenient for the FCC and parties other than the filer for there to be only one upload of the pleading on a lead Application and Call Sign, not all of them, since that method saves the need to review each pleading for each Application and Call Sign to see if there is any variation. (Even if entry on ULS is via one upload of the pleading, once ULS distributes the submitted pleading to each Application and Call Sign, there is no indication that each pleading is identical, other than having the same file name which does not assure each is identical.). The FCC staff have accepted this filing method in the past when Petitioners inquired about this. Thus, Petitioners are filing this Reply only on the Lead File Number captioned- above, if that is even possible—see Attachment A hereto that explains problems Petitioners have been experiencing today with the ULS and the ULS pleading system that have prevented completing the online pleading form and may ultimately prevent filing this reply electronically via ULS.

601 that resulted in grant of the Licenses, but some other entity's, and that Mr. Frenzel had affiliates he did not disclose that disqualified Progeny from its applied for bidding credit and thus the auction. The Opposition misleads and lacks candor on these major points. Based on the facts in the Petition, the FCC must move to hold a hearing and investigation under Section 309(d). The FCC should also sanction and criminally prosecute Progeny, Frenzel and the new owners of Progeny and its current and past legal counsel for maintaining and perpetuating fraud against the government since there is now way that they could not have known that Progeny was not formed and did not exist until after Auction No. 21 as evidenced by court and state records. Also, based on the facts in the Petition, the FCC should find that Progeny and its controlling interests lack the character and fitness to be Commission licensees.

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Attached: Appendix, Attachment A, Attachment B and Exhibit 1

1. Summary

The Opposition fails to refute, and effectively admits, the Petition's showing of fatal defects and fraud. First, see Attachment B hereto: a FCC FOIA response to Warren Havens. That response makes clear that the only information Progeny provided to the FCC (and that the FCC communicated to Progeny) before, during and well after the subject Progeny long form in the subject LMS auction, and its grant (with the limited waiver) is all on ULS. That ULS information does not contain the disclosures of the defects the Petition asserts and shows which the Opposition suggests were made and accepted by the FCC. Thus, the Opposition entirely fails to refute the Petition as to these defects. The defects were not disclosed, and the FCC did not know of them, and gave no waiver of them (nor would FCC rules and court precedent have supported any such waiver, if it was presented for consideration). Further, the Opposition also failed to refute the Petition's assertion of lack of demonstrated due diligence: the reason for that is clear in the records of NPRM docket 06-49 and indicated below.

2. Regarding undisclosed Progeny formation after the auction, and it not being the actual entity that won the subject Licenses in the auction:

As the Petition showed in detail, and the Opposition merely denied with no contrary evidence: Progeny submitted a fatally defective long form (indicated, again, in this subsection 1), and hid that from the FCC as shown in the Petition and summarily indicated above. One applicable precedent is: *In the Matter of Trompex Corporation, Order on Reconsideration*, DA 03-636, Rel. March 6, 2003, including the following (underlining added, footnotes in original but renumbered herein):

Supra's long-form application was properly dismissed because Supra was neither a winning bidder nor an applicant in Auction No. 26 and thus had no right under section 1.2107(c) to file a long-form application.⁴ Supra's long-form application also was properly dismissed because Supra violated section 22.213 of the Commission's rules, which prohibits the filing of any long-form applications

⁴ [FN from original:] *See id.*

following a geographic-area paging auction by anyone that was not a winning bidder in the auction.⁵

* * * *

.... despite knowing that it was neither an applicant nor a winning bidder, Supra used ... another entity that was an applicant and a winning bidder in an effort to circumvent procedures established in ULS and in the Commission's rules.

* * * *

Regardless of whether an unauthorized transfer of control did or did not occur, the fact remains that the petitioners attempted to evade Commission licensing and assignment requirements and thereby violated Commission rules, making Trompex disqualified to hold the licenses and mandating the dismissal of Supra's long-form application.

* * * *

Moreover, the petitioners' actions following Auction No. 26 violated the integrity of the competitive bidding, licensing, and assignment processes that the Commission established to effect proper, administratively-sound assignment of spectrum.

* * * *

Allowing an entity to acquire licenses applied for, bid on, and won by another entity in a Commission auction would be contrary to the public interest because it could result in substantial injury to other bidders who based their bidding strategy on knowing those who they were competing against. If we were to allow an entity to submit an application for licenses bid on and won by another entity, such entities could gain an "unfair advantage over other bidders in the auction," and could even intentionally mislead other bidders.⁶ Moreover, it would undermine the enforcement of competitive bidding rules that are specifically designed to protect against gaming the auction system. An elementary concept in distributing licenses through a competitive bidding process is that licenses will be awarded to the winning bidder, which is considered to be the party that values them most highly. The strict enforcement of our rules in this regard ensures that the ultimate purpose of the auction, which is to encourage and facilitate the provision of reliable service to the public, is achieved. Further, the Commission's competitive bidding rules fulfill the broader purpose of Section 309(j) of the Communications Act of 1934, as amended,⁷ which created an efficient mechanism to assign a scarce resource to its most productive use.⁸

⁵ [FN from original:] 47 C.F.R. § 22.213. *See also* 47 C.F.R. § 1.2107(c) (stating that a winning bidder must file the long-form application for the licenses for which it was the winning bidder pursuant to the rules governing the service authorizing the licenses).

⁶ [FN from original:] *Two Way Radio*, 14 FCC Rcd. at 12043, ¶ 15.

⁷ [FN from original:] 47 U.S.C. § 309(j).

⁸ [FN from original:] *See* BDPCS, Inc., BTA Nos. B008, B036, B055, B110, B133, B149, B261, B298, B331, B347, B358, B391, B395, B407, B413, B447, Frequency Block C, *Memorandum Opinion and Order*, 15 FCC Rcd 17590, 17598, ¶ 14 (2000). As the House Committee on Energy and Commerce explained, "[a] carefully designed system to obtain competitive bids from competing qualified applicants can speed delivery of services, promote efficient and intensive use of the electromagnetic spectrum, prevent unjust enrichment, and produce revenues to compensate the public for the use of the public airwaves." H.R. Rep. No. 103-111, at 253 (1993), reprinted in 1993 U.S.C.C.A.N. 378, 580.

The preceding cited sections from this Trompex decision, including its conclusions, fully apply in this Progeny case. In fact, they apply more so since in this case Progeny hid the defects, and now attempts to evade them—whereas, as in the case of Trompex its effectively disclosed in the combination of its short form and the Supra long form and related pleadings, the defects and tried to argue around them. Progeny fully hid the defects and even schemed to do that (see the annotated court documents Petitioners submitted in the Petition: part of the referenced and incorporated past pleadings and also see Exhibit 1 hereto), and then used the unlawfully obtained licenses to get the FCC to hold hostage the entire LMS Multilateration radio service via its rule-making petition, RM 10403 and its resultant NPRM 06-49 (and on those, Progeny falsely asserted, with no basis in industry expertise and contrary to well established studies in the public record, including the Federal Radionavigation Plans, that GPS “obviated” the need for M-LMS service and made it impossible to pursue (filings by Petitioners in that docket made the above point fully clear, including by citation to scores of industry expert reports). In that regard, in its Applications, Progeny suggests, with no proof, it is now engaged in due diligence to pursue M-LMS for location and intelligent transportation (since Petitioners in that docket proved the Progeny position was false and specious), however, Progeny did not withdraw its position in that docket, 06-49, and this it contradicting itself. Progeny first did not support its position in that docket—not since 2003 (when RM 10403 commenced) and now does not support it contrary position to attempt to renew the licenses, in the Applications. On all counts, Progeny cannot be trusted or believed—the record makes that clear. That lack of candor, and some outright fraud, fully disqualified all controlling interests in Progeny and Progeny, for reasons reflected in Trompex, above.

3. Regarding undisclosed affiliates:

The Petition showed that Frenzel was an officer or director in various companies, outside of Progeny. The Opposition admits to that. However, the Opposition falsely states that Frenzel did not have any affiliates for designated entity purposes. That is disingenuous since the FCC rules and precedents clearly show otherwise (and since Progeny has capable internal and FCC-law legal counsel involved in the Applications). The Opposition cites to an inapposite Cornerstone decision: Besides being on appeal by Petitioners, that decision rested upon whether or not there was an identifiable controlling interest in Cornerstone, whereas in this Progeny case, it is entirely clear that Mr. Frenzel asserted to the FCC (and the FCC accepted) that he was the sole owner and controller of Progeny. Officers and directors are, by definition in corporate law, vested with some but not all of the powers of the party or parties with the ultimate voting/ acting control in the subject entity. FCC rule Section 1.2110 provides (emphasis added):

§ 1.2110 Designated entities.

(a) Designated entities are small businesses, businesses owned by members of minority groups and/or women, and rural telephone companies.

(b) Eligibility for small business and entrepreneur provisions –

(1) Size attribution.

(i) The gross revenues of the applicant (or licensee), its affiliates, its controlling interests, the affiliates of its controlling interests, and the entities with which it has an attributable material relationship shall be attributed to the applicant (or licensee) and considered on a cumulative basis and aggregated for purposes of determining whether the applicant (or licensee) is eligible for status as a small business, very small business, or entrepreneur, as those terms are defined in the service-specific rules. An applicant seeking status as a small business, very small business, or entrepreneur, as those terms are defined in the service-specific rules, must disclose on its short- and long-form applications, separately and in the aggregate, the gross revenues for each of the previous three years of the applicant (or licensee), its affiliates, its controlling interests, the affiliates of its controlling interests, and the entities with which it has an attributable material relationship.

First, there is no dispute that Mr. Frenzel admitted to being the sole owner and the “controlling interest” in Progeny, which is the “applicant” under the above rule. Further, there is no dispute that Mr. Frenzel was the sole or chief officer in Progeny: for example, the long form

of Progeny submitted 11.3.1999 was signed by Otto N. Frenzel as the “President/ CEO” (FN 0000006894). Thus, under the immediately above cited rule, and the one cite immediately below, the affiliates of Mr. Frenzel are the affiliates of Progeny and their gross revenues for the stated three years had to have been disclosed on the Progeny long form: however, as the Petition stated, they were not.

Regarding the above, among other relevant rules, the following also applies:

§ 1.2110 (c) (2) Controlling interests.

* * * *

(ii) (F) Officers and directors of the applicant shall be considered to have a controlling interest in the applicant. The officers and directors of an entity that controls a licensee or applicant shall be considered to have a controlling interest in the licensee or applicant. ... To the extent that the officers and directors of an applicant are affiliates of other entities, the gross revenues of the other entities are attributed to the applicant.⁹

Thus, again, since Mr. Frenzel was both the officer of Progeny (in fact, its principal officer: the President/ CEO) and further since he asserted full ownership and controlling interest in Progeny, thus, the companies which were his affiliates (under these relevant FCC rules) are the affiliates of Progeny. In that regard, the FCC rules, including the section just cited above, and precedents are clear that an officer or director in an entity causes affiliation by deemed control: the meaning of “affiliate” under these FCC Designated Entity rules is that the applicant has some level of affiliation with another entity that is deemed to give the applicant a level of

⁹ See also, in Section 1.2110 (underling added):

(5) Affiliate. (i) An individual or entity is an affiliate of an applicant ... if such individual or entity--

(A) Directly or indirectly controls or has the power to control the applicant, or

(B) Is directly or indirectly controlled by the applicant, or

* * * *

(B) Control can arise through stock ownership; occupancy of director, officer or key employee positions; contractual or other business relations; or combinations of these and other factors. A key employee is an employee who, because of his/her position in the concern, has a critical influence in or substantive control over the operations or management of the concern.

control over said entity sufficient for the FCC to find that entity an affiliate for purposes of attributable gross revenues (not necessarily full legal control in all cases of affiliation). Thus, the FCC deems under the just cited rule that the position of officers and directors causes affiliation. Where the controlling interest in the applicant (whether by legal control, or deemed control by officer or director position—both apply in this case to Mr. Frenzel) is an officer or director in an outside entity (entity of than the applicant), that outside entity is the affiliate of the applicant, including since “[o]fficers and directors...shall be considered to have a controlling interest....” which is basis of the FCC definitions of affiliation and affiliates.

In addition, regarding other undisclosed affiliates of Progeny: (i) See Declaration below: Mr. Frenzel was married and had at least one child, a grown man at the relevant time and clear not estranged but connected with Mr. Frenzel in business or financial matters: that son was an affiliate under FCC Designed Entity rules (including part of Section 1.2110). Progeny did not disclose this kinship affiliate. (ii) Further, as the Declaration notes, Mr. Frenzel was engaged in real estate redevelopment business, which enterprise also was an affiliate of Progeny, but also not disclosed. (iii) Also, it is clear in FCC records the Progeny entity that Mr. Frenzel alleged to fully own and control had a close relation with the Progeny entity that was the actual high bidder in the subject LMS auction. That relation caused that actual-bidder Progeny to be the affiliate of the Frenzel-controlled Progeny. However, the gross revenues of the actual-bidder Progeny was not disclosed by the Frenzel-controlled Progeny. The actual-bidder Progeny had as its affiliate Nick Frenzel (and or businesses controlled by Mr. Frenzel used to finance said actual-bidder Progeny, as FCC records show).

4. Regarding asserted due diligence.

The Opposition also appears to attempt to support the Applications assertion of due diligence. The Petition asserted simply that the Applications did not show due diligenc: that is since they contained only bald assertions. It is well established that bald assertions fail, where,

as in this case, a substantial showing is required that can be independently verified. Since the Opposition did not present any documentary evidence of the baldly asserted due diligence, the Opposition also failed on this matter. Progeny cannot suggest, nor can the FCC accept, any implied confidentiality of the generally asserted due diligence on the basis that such information is confidential to Progeny, since renewal applications are public and subject to petition to deny challenges under Section 309(d) of the Communication Act, which cannot rely on confidential information, since it makes meaningless those petition rights and petitions. Progeny has not otherwise-- at any time before or after submitting the Application-- showed any documentary evidence or even text details (sufficient for any independent verification or even understanding) of the asserted due diligence in the Application. In addition (first, see above text on the following point), the Applications suggest that Progeny is pursuing technology and future operations that involve multilateration / location systems and Intelligent Transportation System ("ITS") applications. Apart from these being unsupported assertions as indicated above, these are also directly at odds with the Progeny position in RM 10403 that it carried into docket 06-99 (by now, over 7 years, and scores of filings) that LMS-M is not needed for any location system, which GPS has "obviated," and that ITS applications are not viable, at least not with M-LMS. Thus, the badly asserted due diligence has to be rejected (but if accepted, then the Progeny position in docket 06-49 must be considered withdrawn and that NMRM dismissed: Progeny's position was what created and sustained it).

5. No Affidavit

Notably, the Opposition does not contain an affidavit from a person with direct knowledge under penalty of perjury to support the Opposition's statements of fact and arguments in opposition. Thus, the Opposition is defective and should be dismissed. The Petition made factual assertions. The Opposition denied the facts in the Petition but cannot do so without a declaration from a person who knows them not to be true. In a petition to deny proceeding,

factual assertions must be supported by an affidavit—see §1.939(f). For this reason, the Opposition is defective and its arguments to the contrary cannot be accepted. Thus, the Petition’s facts stand unrefuted.

6. Further Responses to the Opposition’s Arguments

Some of the below discussion reiterates and supplements some of the items discussed above. The Opposition is avoiding the actual issues raised. First, the issue is not whether Frenzel was an owner or the only owner of the bidding entity called Progeny LMS LLC, but the fact that the Progeny LMS LLC Mr. Frenzel stated he was the sole owner of was not in the auction, rather it was created after the auction. Frenzel and his attorneys misled the FCC on that matter as the Petition states. Nothing in the Opposition directly addresses this issue because it is entirely clear in the record. As shown in the Past Pleadings and official state filing, Progeny was not actually formed and incorporated until 4/16/99, which was after Auction No. 21 had already occurred. For example, see Exhibit 1 hereto that provides again for convenience the Ex Parte 2 (filed May 7, 2007 in WT 06-49) referenced and incorporated in the Petition at page 6. For example, see the page labeled 12 of 81 that contains Progeny’s Certificate of Organization and page 13 of 81 and onward that contains the Progeny Articles of Organization. At no point did Progeny, Frenzel or Progeny’s legal counsel inform the FCC of this fact in its Form 601, Form 602 or any other application or filing with the FCC. There is nothing in the FCC records indicating that Progeny ever informed the FCC of this fact. The Petition is based on specific information from the referenced Progeny court case in an Indianapolis court, FCC records of the two auction long forms [of *two* Progeny entities], the related short form, other various public records (including formation documents of Progeny), and specific FCC rule requirements and prohibitions violated, and court precedents as to those rules and violations. The Petition shows that Progeny’s principals, Otto Fenzel and counsel Mike McMains (and others named in the court documents advising Frenzel) *withheld* from the FCC (it is not in FCC records) information required under

auction and licensing rules, including as to the real auction applicant and party in control, and Mr. Frenzel's attributable gross revenues including from his many large-company affiliates (none were even listed). (The actual Progeny company that entered the auction and bid, was not controlled by Frenzel, and did not assert as an affiliate Frenzel and his affiliates' gross revenues were not listed toward the obtained bidding credit. When Frenzel created a new Progeny entity to compete after the auction to obtain the licenses, by a competing long form, it could not solve the issue of Frenzel's attributable gross revenues, and thus it withheld the information as the court documents showed as thought through: Mr. Frenzel and his advisors understood that disclosing the information would disqualify the newly created Progeny entity, and Frenzel and his counsel McMains did not even create this new Progeny entity that obtained the licenses as a result of the auction until after the auction process. The withheld information, of central decisional importance and that resulted in a large bidding discount, is *not* in FCC records, and in fact it is contrary to representations under oath made by Mr. Frenzel in the long form to get the licenses. When these facts were previously raised to the FCC, the FCC informed Petitioners in an order that the FCC's actions in that order were without prejudice to the facts raised in the Petition including those regarding Progeny not being formed and existing until after the auction and Mr. Frenzel's affiliates.¹⁰ Thus, the FCC has recognized that these facts may be raised. Now is the appropriate time for them to be decided upon.

The Opposition also fails to address the second principal issue in the Petition, which is that Frenzel had affiliates as defined in FCC rules including by being an officer or director in numerous legal entities that had gross revenues that disqualified Progeny from any bidding credit. The Opposition spuriously suggests that unless a person in control of the bidding company controls an outside company, the fact that said person is an officer or director in that

¹⁰ Order, DA 08-2614, released November 26, 2008, 23 *FCC Rcd* 17250, at ¶28 that stated, "...The relief granted Progeny in this order is without prejudice to Havens' allegations concerning Progeny's status as an M-LMS licensee...."

company does not make that company an affiliate. However, that is exactly what the relevant rules provide. The rules explicitly state that as do many FCC precedents, including but not limited to Sections 1.2105 and 1.2110. The FCC rules provide that having a position of officer or director creates affiliation because that does involve a level of control. The FCC rules on affiliation give examples of numerous types of affiliates few of which involve ultimate control by the applicant or the controlling interest (or officer or director in the applicant) of an outside entity which is the affiliate. Rather, the affiliation involves lesser forms of control or common interest including by common management, sharing of facilities, “attributable material relation” (such as under certain spectrum leases), kinship, marriage –and positions of officer and director.¹¹

The Cornerstone matter involved whether or not there was an identifiable controlling interest (actual legal controlling interest in the entity) in Cornerstone SMR. However, in this Progeny case, Progeny itself asserts that at the relevant time Frenzel had 100% interest. Therefore, the Cornerstone matter is not relevant.

Among other relevant rules, Section 1.2110(c)(2)(ii)(F) states:

....To the extent that the officers and directors of an applicant are affiliates of other entities, the gross revenues of the other entities are attributed to the applicant.

Frenzel at the relevant time alleged to be the sole controller and owner in Progeny and also Progeny’s President and CEO (the Progeny amended Form 601 filed 11/3/99 was signed and

¹¹ Frenzel has kinship affiliation that was not reported. Public records that show that he has a son by the same name. Also, Mr. Havens met in person after Auction No. 21 Mr. Frenzel and his son. However, Progeny did not disclose this kinship affiliation or any other (e.g. spouse, other children). This reply contains a declaration by Mr. Havens to support this statement of fact and Mr. Havens’ direct knowledge thereof.

certified by Otto Frenzel as Progeny's President and CEO).¹² The Petition demonstrated that Frenzel was an officer or director in other companies and the Opposition admits he sat on the boards and was a director of companies. Opposition does not deny the facts asserted in the Petition in terms of particular companies in which Frenzel was an officer or director at the relevant time. Therefore, the Petition was correct, and the Opposition effectively admits, that Frenzel simply failed to comply with the disclosure requirements of Commission designated entity rules.

Also, the Opposition is misleading in its description of the 1999 court settlement agreement. Prior to the settlement agreement, per court records, there were several equity holders in Progeny. In fact, Progeny's own Exhibit F to its Form 601 stated that "The Applicant seeks to amend its long-form auction application (FCC Form 601) ("Application") to implement a settlement ending litigation between various equity interest holders in the Applicant." Thus Progeny's attempts to now assert that Frenzel was always the sole real owner and controller is incorrect. There were other persons involved. Therefore, to even to attempt to qualify at the Form 601 stage, Frenzel had to disclose those other persons involved up to the settlement point since those persons were his business affiliates and possibly controlling interests in Progeny (or the entity that actually bid in Auction No. 21, but did not file a Form 601) until Frenzel made the settlement agreement. Clearly, the settlement agreement was arrived at by Frenzel by offering consideration to Johnson and said other parties.

Thus, contrary to the Opposition, it is clear that the Commission has not decided on all of the issues raised in the Petition. In addition, evidence of fraud is not time barred and should always be considered. *See e.g. Butterfield v. FCC*, 99 U.S. App. D.C. 71; 237 F.2d 552 (1956) ("Butterfield"). Petitioners may raise the noted new facts in the Petition and this Reply for the

¹² Any officer and director has some level of "control" in a company. A person who owns and controls 100% of a company, however, has all of the control of any single officer or director position.

reasons given in *Butterfield v. FCC*.¹³ Also see: (i) *Re Beacon Broadcasting Corporation*, FCC FCC96-66 (adopted 2/21/96): reconsideration is appropriate where petitioner shows either material error or omission in original order, or raises additional facts not known or not existing until after petitioner's last opportunity to present such matters, and (ii) *Re Armond J. Rolle* (1971) 31 FCC2d 533: proceedings will be remanded and reopened by newly discovered evidence relied on by petitioner that could not with due diligence have been known at time of hearing, and if proven true, is substantially likely to affect outcome of proceeding. These also apply in to the instant case.

Further, contrary to the Opposition's assertions, the Petition was not frivolous and sanctionable, but actually shows that Progeny has committed fraud and harmed competitors, including Havens. Havens was damaged by Progeny's fraud in Auction No. 21 because the "Progeny" entity that bid at auction should have been disqualified and the Progeny that was

¹³ Where DC Circuit Court held:

....In these circumstances nothing in the language of sections 310(b) and 405 deprived the Commission of power to receive the new evidence and to reconsider or redetermine the case....

Delay in seeking reopening of the record is a factor to be weighed in the exercise of the Commission's discretion. Here, however, it was excusable. The only reason the appellants' effort to reopen was not made earlier in the proceedings was that the new events which occasioned it were kept secret by WJR for several months. Such a circumstance would have called for reopening the record even under the dissenting opinion in Enterprise. That opinion pointed out that 'there was no concealment', because the successful applicant had disclosed the option agreement a few days before the argument of the petition for rehearing. Our dissenting brother added, however, that 'had it withheld the information until after the (denial of the petition for rehearing) notwithstanding the execution of the agreement (earlier), a very different situation might well be said to have arisen. That is this case.

.... Moreover, appellants should be readmitted to the contest, even if that would serve to prolong it. The new evidence here goes to the foundation of the Commission's decision, so that refusal to reopen the record deprives appellants of their rights as competing applicants....

.... The Commission will conduct further hearings on the question of differences between WJR's original and modified proposals and will reconsider its grant to WJR in the light of the differences thus disclosed

Butterfield v. FCC, 99 U.S. App. D.C. 71; 237 F.2d 552 (1956). *Underlining added. Footnotes deleted*

created after the auction and ultimately defrauded the FCC to get the Licenses unfairly competed with Havens for the Licenses. Havens bid for many of the Licenses. Had Progeny been properly disqualified, then Havens would have held the high bid for many of the Licenses. Thus, Havens has *Ashbacker*¹⁴ rights to the Licenses and is prejudiced by grant of the Applications and renewal of the Licenses. Havens is making clear here that he has pending challenges to the Licenses and that if successful at the Commission or Court, then he would be entitled to the spectrum of the Licenses since Progeny, if it had been sincere and truthful, should have been disqualified and the Licenses revoked for the reasons given in the Petition and herein. Havens effectively submitted a competing application for Progeny's Licenses and was the high qualified bidder for many of them if the clear applicable rules on qualification / disqualification are applied based on the facts given in the Petition and herein. Thus, Havens has rights under the well known US Supreme Court case, *Ashbacker*, pertaining to competition for FCC license applications. Therefore, by Progeny's actions, Havens has been damaged and is further prejudiced if the Applications are granted and the Licenses renewed.

The Opposition's reference at Footnote 3 to two FCC orders and its arguments based upon them are irrelevant to the instant proceeding. However, Petitioners note here that the Commission "warning" in the 2007 order has been appealed by Petitioners and has no relevance here, and further, the FCC has commenced an investigation of the entity involved in that proceeding based on the evidence presented by Petitioners in their petitions. The Opposition's reference to those two FCC orders is solely meant to divert attention from the substance of the Petition and Progeny's own rule violations, fraud, lack of candor and lack of character and fitness to be a Commission licensee.

¹⁴ Under *Ashbacker v. FCC* 325 U.S. 846, 65 S. Ct. 1405, 89 L. Ed. 1969, 1945 U.S. LEXIS 2784 (1945) ("*Ashbacker*") the FCC may not decide on one mutually exclusive application without a hearing on both. See *Crawford v. FCC*, 368 U.S. App. D.C. 40.

7. Hearing Required

To the degree that the FCC does not find the facts and arguments in the Petition sufficient to grant the Petition and deny the Applications, it must hold an evidentiary hearing as required under Section 309 (d) of the Communications Act including for the purposes of obtaining the full record of the Progeny dealings with the actual auction winner controlled by Mr. Curtis Johnson. This includes the court records of the case filed by Mr. Frenzel against Mr. Johnson and the settlement of that case, which provided to Mr. Frenzel a basis to assert to the FCC, after the settlement, that he was the sole owner and controller of Progeny (However, again, the Progeny Mr. Frenzel presented to the FCC to obtain the Licenses and that did obtain the Licenses was created after the auction and was never involved in the bidding—and that was never disclosed to the FCC per FCC records).

8. Proceeding Moot

Petitioners note here that if they are successful in their pleadings in the proceeding involving the transfers of control in Progeny, then the Applications are moot since it would mean that the actions of the new controlling interests of Progeny, who submitted the Applications, are defective and unauthorized and thus the Applications would have to be dismissed.

9. Conclusion

For the reasons given, the Petition should be granted and the relief requested by Petitioners granted, including but not limited to an evidentiary hearing held, dismissal of the Applications, revocation of the Licenses, disqualification of Progeny as a licensee for lack of character and fitness and other appropriate sanctions.

Respectfully,

[Submitted Electronically. Signature on File]

“Petitioners” --

Warren C. Havens, Individually and as President of
Telesaurus Holdings GB LLC

Skybridge Spectrum Foundation

& Affiliates (as defined in FCC auction rules)

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August 31, 2010

Appendix

As indicated in the caption of this Reply, the File Numbers and Call Signs subject of this Reply are all of the Progeny LMS, LLC File Numbers and Call Signs listed in FCC Public Notice Report No. 6012

FILE NOS.

0004307320	0004307348	0004307395
0004307557	0004307350	0004307397
0004307556	0004307351	0004307398
0004307562	0004307352	0004307399
0004307559	0004307365	0004307508
0004307561	0004307366	0004307401
0004307347	0004307367	0004307403
0004307308	0004307368	0004307404
0004307309	0004307369	0004307405
0004307310	0004307371	0004307406
0004307334	0004307372	0004307407
0004307314	0004307373	0004307408
0004307330	0004307374	0004307409
0004307315	0004307375	0004307410
0004307316	0004307376	0004307411
0004307317	0004307426	0004307412
0004307318	0004307355	0004307413
0004307319	0004307425	0004307427
0004307400	0004307357	0004307429
0004307321	0004307358	0004307430
0004307322	0004307359	0004307431
0004307323	0004307360	0004307432
0004307324	0004307361	0004307433
0004307325	0004307466	0004307434
0004307326	0004307363	0004307435
0004307328	0004307364	0004307436
0004307313	0004307377	0004307437
0004307356	0004307378	0004307438
0004307331	0004307379	0004307414
0004307333	0004307380	0004307415
0004307362	0004307382	0004307417
0004307335	0004307383	0004307418
0004307336	0004307384	0004307420
0004307337	0004307385	0004307421
0004307338	0004307386	0004307422
0004307339	0004307387	0004307423
0004307340	0004307388	0004307424
0004307341	0004307389	0004307353
0004307342	0004307390	0004307329
0004307343	0004307391	0004307439
0004307345	0004307392	0004307441
0004307346	0004307393	0004307442
0004307506	0004307394	0004307443

0004307444	0004307499	WPQP865
0004307445	0004307501	WPQP954
0004307446	0004307502	WPQQ243
0004307447	0004307503	WPQP934
0004307449	0004307504	WPQP974
0004307450	0004307505	WPQP852
0004307451	0004307558	WPQP907
0004307452	0004307555	WPQP845
0004307465	0004307509	WPQP847
0004307311	0004307510	WPQP849
0004307467	0004307511	WPQP886
0004307468	0004307512	WPQP855
0004307469	0004307513	WPQP883
0004307470	0004307526	WPQP858
0004307471	0004307528	WPQP859
0004307472	0004307529	WPQP860
0004307473	0004307531	WPQP861
0004307474	0004307532	WPQP864
0004307475	0004307533	WPQP993
0004307453	0004307534	WPQP866
0004307454	0004307535	WPQP869
0004307455	0004307536	WPQP870
0004307456	0004307537	WPQP871
0004307457	0004307538	WPQP874
0004307458	0004307514	WPQP875
0004307459	0004307515	WPQP876
0004307460	0004307516	WPQP853
0004307461	0004307517	WPQP921
0004307462	0004307518	WPQP882
0004307464	0004307519	WPQP885
0004307477	0004307520	WPQP931
0004307478	0004307522	WPQP888
0004307479	0004307523	WPQP890
0004307480	0004307524	WPQP891
0004307481	0004307525	WPQP894
0004307482	0004307539	WPQP896
0004307483	0004307540	WPQP899
0004307484	0004307541	WPQP900
0004307485	0004307542	WPQP901
0004307487	0004307543	WPQP902
0004307488	0004307546	WPQP905
0004307489	0004307547	WPQP906
0004307490	0004307548	WPQP884
0004307491	0004307549	WPQP910
0004307492	0004307550	WPQP911
0004307493	0004307551	WPQP912
0004307494	0004307552	WPQP915
0004307495	0004307554	WPQP937
0004307496		WPQP940
0004307497	CALL SIGNS	WPQP941
0004307498		WPQP942

WPQP943	WPQQ214	WPQP918
WPQP946	WPQQ235	WPQP959
WPQP947	WPQQ238	WPQP969
WPQP948	WPQQ239	WPQP990
WPQP951	WPQQ240	WPQQ210
WPQP952	WPQQ244	WPQQ220
WPQP953	WPQQ246	WPQQ227
WPQQ234	WPQQ247	WPQQ254
WPQP917	WPQQ249	WPQQ268
WPQQ233	WPQQ250	WPQP938
WPQP923	WPQQ251	WPQP872
WPQP924	WPQQ252	WPQP895
WPQP926	WPQQ217	WPQP913
WPQP927	WPQQ219	WPQP936
WPQP929	WPQQ222	WPQP977
WPQQ241	WPQQ223	WPQQ218
WPQP932	WPQQ224	WPQQ260
WPQP935	WPQQ225	WPQP877
WPQP956	WPQQ228	WPQP851
WPQP957	WPQQ229	WPQP878
WPQP958	WPQQ230	WPQP892
WPQP962	WPQP916	WPQP919
WPQP964	WPQP880	WPQP933
WPQP965	WPQQ253	WPQP960
WPQP967	WPQQ255	WPQQ201
WPQP968	WPQQ257	WPQQ215
WPQP970	WPQQ259	WPQQ242
WPQP972	WPQQ262	WPQQ258
WPQP973	WPQQ263	WPQP949
WPQP976	WPQQ264	WPQP904
WPQP978	WPQQ265	WPQP995
WPQP981	WPQQ267	WPQP862
WPQP982	WPQQ269	WPQP873
WPQP983	WPQQ270	WPQQ236
WPQP984	WPQQ272	WPQP920
WPQP987	WPQQ231	WPQP903
WPQP988	WPQP850	WPQP914
WPQP989	WPQP848	WPQP925
WPQP992	WPQP879	WPQP944
WPQP893	WPQP889	WPQP955
WPQP994	WPQP930	WPQP867
WPQP997	WPQP945	WPQP979
WPQP998	WPQP961	WPQP863
WPQP999	WPQP971	WPQP986
WPQQ203	WPQQ202	WPQP854
WPQQ205	WPQQ212	WPQP857
WPQQ206	WPQP846	WPQP868
WPQQ208	WPQP856	WPQP881
WPQQ209	WPQP887	WPQP898
WPQQ211	WPQP897	WPQP909
WPQQ213	WPQP908	WPQP922

WPQP966
WPQP975
WPQP985
WPQP996
WPQQ207
WPQQ216
WPQQ226
WPQQ237
WPQQ248
WPQQ256
WPQQ266
WPQP939
WPQP950
WPQP963
WPQP980
WPQP991
WPQQ204
WPQQ221
WPQQ232
WPQQ245
WPQQ261
WPQQ271
WPQP928
WPQQ200

Attachment A:

Subject: ULS Pleading System not working; filing Reply pleading via email to FCC re: Lead File No. 0004307320

Date: Tuesday, August 31, 2010 5:56 PM

From: Jimmy <jstobaugh@telesaurus.com>

To: <paul.dari@fcc.gov>, <marlene.dortch@fcc.gov>, "secretary@fcc.gov" <secretary@fcc.gov>

Cc: <bolcott@ssd.com>, Warren Havens <warren.havens@sbcglobal.net>, Jimmy <jstobaugh@telesaurus.com>

Conversation: ULS Pleading System not working; filing Reply pleading via email to FCC re: Lead File No. 0004307320

Ms. Marlene Dortch, Secretary FCC

Mr. Paul D'Ari, WTB, FCC

This is to inform the Secretary's office and the Wireless Telecommunications Bureau, that the undersigned, ("Petitioners") have had the below-described problems with the FCC's ULS pleading system today that have prevented them from completing the online form in order to electronically file a Reply to Opposition to Petition to Deny re: Lead File No. 0004307320 (around 200 application File Nos. total) that is due today. The FCC's rules allow electronic filing of such pleadings.

The below-described problems have persisted for several hours now. Petitioners have contacted the FCC's ULS tech support several times today to try and resolve these problems. A representative for Petitioners spoke with Beth at ULS and got Case #1400997 opened. As of yet, the FCC has not informed Petitioners that the problems have been fixed. It is now too late for Petitioners to timely file a Reply in paper since the FCC's offices are closed. Not to add, Petitioners are still working on their reply and intended to file it electronically. In light of these ULS online pleading system problems, Petitioners now intend to file their Reply today via electronic email to both of you. Once the ULS pleading system is working and accessible again, Petitioners will file the Reply electronically on ULS as they planned to do today. Petitioners have frequently used the ULS pleading system to file pleadings electronically without any problem.

Description of Problems with ULS Online Pleading System:

Today, the ULS pleading system will not allow Petitioners to complete the online form to submit a pleading. At one of Petitioners' office locations, employees of Petitioners attempted to begin filling out the online pleading form with all relevant information. The ULS pleading system allowed Petitioners to get as far as starting to enter in file numbers, but it took an excessive amount of time to upload each file number and then the system would hang up during the process and have to be refreshed constantly before another file number could be entered. After several attempts to enter in file numbers, and with only about 4 entered in, the ULS pleading system stopped working and the screen went white and the previous screen could not be recovered. Petitioners then attempted to start the form over again, but then could only get as far as the cover page. Several times while refreshing the cover page it would get hung up and the internet browser would say "Server not found". Petitioners have been able to access multiple

websites today so it does not appear to be an internet connection problem at Petitioners' offices. Also, Petitioners tried at another office internet location to access the ULS pleading system, but also were unsuccessful. At that other location, they could get to the cover page of the pleading system and enter in the filer information, but they could not then get to the next page where the file number(s) and call sign(s) are entered. And when they attempted to start over again, they could then not even get back to the cover page.

Petitioners have been attempting to access the ULS pleading system and complete the online form using the following: 2 Apple computers using Safari and Firefox browsers (which have never had problems in the past making filings including of the original petition in the subject proceeding) and 3 PC computers using Internet Explorer and Firefox. They have also tried using 3 different internet connections. As noted, Petitioners have been able to access other websites today using these connections. However, no matter what they have tried, the ULS online pleading system will not work. Also, within the last hour or so, Petitioners have also been unable to access and view attachments of the Progeny LMS Form 601, File No. 0000006894 (browsers just say they are waiting for wireless2.fcc.gov and don't download or open attachments). Thus, it appears that there is some problem with the ULS, including the ULS pleading system, preventing Petitioners from filing their reply via ULS.

Petitioners are sending this email well ahead of today's pleading filing deadline to document that they have been having this problem with the ULS pleading system for several hours today, that it is still persisting and that the problems have been going on well in advance of the deadline for filing their reply, 12am.

A copy of this email will be included as an attachment to Petitioners' reply when it is filed via email.

Progeny's legal counsel is copied on this email.

Sincerely,

Jimmy Stobaugh
On behalf of Petitioners
Telesaurus Holdings GB LLC
Skybridge Spectrum Foundation
Warren Havens
And Their Affiliates

Cc: Warren Havens
Bruce Olcott, Counsel for Progeny LMS LLC



Federal Communications Commission
Washington, D.C. 20554

October 13, 2006

Warren C. Havens
2649 Benvenue Avenue
Suite 3
Berkeley, California 94704 *

Re: Freedom of Information Act Request
FOIA Control No. 2006-529

Dear Mr. Havens:

This letter responds to your Freedom of Information Act Request, dated September 17, 2006. Your request seeks a copy of all written and other documents sent by Progeny LMS, LLC (Progeny) to any FCC person or office and all documents sent from the FCC to Progeny from January 1, 1998 to the present time. You exclude from your request documents that are currently on the FCC Universal Licensing System (ULS) or the FCC Electronic Comments Filing System (ECFS).

We have not found any documents that respond to your request.

If you consider this response to be a denial of your request, you may file an application for review of this decision with the Commission's Office of General Counsel, 445 12th Street, S.W., Washington, DC 20554, within 30 days of the date of this letter, in accordance with Section 0.461(j) of the Commission's Rules.¹

Sincerely,

A handwritten signature in black ink that reads "Gary Michaels". The signature is written in a cursive style.

Gary D. Michaels, Deputy Chief
Auctions and Spectrum Access Division
Wireless Telecommunications Bureau

¹ See 47 C.F.R. § 0.461(j).

Federal Communications Commission
Washington, D.C. 20554

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, \$300



POSTAGE
\$0.39
FIRST CLASS
BASED FROM 2014
ATTACHED METER

Mr. Warren C. Havens
2649 Benvenue Avenue
Suite 3
Berkeley, CA 94704



Telesaurus JV
Telesaurus VPC LLC
AMTS Consortium LLC
Telesaurus Holdings GB LLC
Intelligent Transportation & Monitoring Wireless LLC



www.telesaurus.com

Nationwide spectrum & solutions for ITS & environment

Berkeley California

May 7, 2007

Telesaurus
Ex parte presentation in WT 06-49, LMS-M NPRM
[Response to Progeny's letter of April 27, 2007](#)

The letter from Progeny¹ dated April 27 2007 ("Progeny Letter") filed in this docket responds to the ex parte presentation that Telesaurus Holdings GB LLC ("Telesaurus"), the licensee of over 80% of the LMS-M A-block licensed spectrum in the nation, submitted in this docket ("Telesaurus Filing").²

All points in the Telesaurus Filing were relevant and central to the subject NPRM, and were also properly in response to the ongoing ex parte presentations of Progeny.³

The Progeny Letter fails to respond to any of the points made in the Telesaurus Filing other than with bald denials and diversions.

[Progeny licenses invalid: the NPRM lacks foundation.](#)

Progeny does not deny the facts asserted in the Telesaurus Filing; indeed, it cannot. See Exhibits 1 and 2 attached below: this evidence, from Progeny itself, demonstrates that Progeny violated numerous fundamental FCC rule requirements that result in the licenses being unlawfully obtained and invalid.

Such evidence is central to this NPRM since the NPRM was initiated and continues only due to Progeny's unilateral campaign⁴ to force rule changes on all others in 902-928 MHz.

¹ Progeny LMS LLC, an Indiana LLC, which holds LMS-M licenses.

² The letter suggests that the individual Havens, not Telesaurus, made the filing, apparently to avoid the substance. Havens holds no LMS licenses.

³ Unlike the detailed written ex parte presentations by Telesaurus, the Progeny notices of ex parte meetings generally fail to provide sufficient description of the substance of the presentations.

⁴ If ever there was a case where changes in the fundamental rules of a radio service warranted diligent attempts by the party seeking the changes (and causing the NPRM) to seek consensus from the other authorized licensees and users of the band, it is this case. Indeed, the Commission made clear that in this 900 MHz ISM band, LMS-M licensees must, by rule (and by Commission Orders on said rule) act to reduce impact upon said other users. *Progeny made no such attempts*, apparently since, in objective discussion with informed parties, it would fail: it cannot even define the wireless services and technology it suggests require the rule changes, nor can it demonstrate need for rule changes,

Contrary to suggestions in the Progeny Letter, the Commission can at any time consider such evidence in the public interest, including under 47 USC §312(a), (1), (2) and (6). This section notes that the Commission may act on information that *comes to its attention*, and does not exclude obtaining such information in a NPRM proceeding or any other manner.

Counsel to and current or future interest holders in Progeny have legal obligations to not hide, obscure, or defend before the Commission rule violations and false statements it knows of or should know of.

Procedural Matters

The Progeny Letter states that the Telesaurus Filing was procedurally defective since it did not contain notice that it was an ex parte presentation.⁵ Telesaurus regrets this oversight and called ESFC staff to ask if it should re-submit the filing with this notice added. EFCS staff investigated the matter, and advised Telesaurus that FCC staff would make the correction on its side. In any case, the Telesaurus Filing was concurrently submitted to FCC staff by email and by filing on ECFS: thus, Progeny and all others involved in this docket had full and timely access to the Filing.

The Progeny Letter speciously suggests that Telesaurus seeks to delay this proceeding. Telesaurus is solely defending Commission rules, the nation's essential need for ITS wireless, and its license rights and business plan. It is Progeny that is the sole cause of this extenuated proceeding, and Progeny that has lobbied FCC staff for years, and that has changed its position over and over.⁶

The Progeny Letter did not state what authority the signer asserts to have in Progeny. In any case, it had no response to the substance of the Telesaurus Filing.

Respectfully,



Telesaurus Holdings GB LLC,
By, Warren Havens, President

Attachments: 2 exhibits

including since LMS-M's current purposes—*the nation's ITS*--are vital and viable, expanding, and are largely avoid, in space and time, Part 15 uses.

⁵ The Progeny Letter at footnote 2 notes that the Telesaurus Filing did not contain a referenced attachment. That attachment is not needed for the purposes of said Filing.

⁶ Progeny knew or should have known that its unilateral attempt to change the existing balanced rules and adversely affect all others in this band would result in the extenuated adversarial proceeding that has resulted. The LMS rulemaking in the 1990's involved years and over 1,000 filings. After the Commission therein carefully crafted rules balancing user interests—*and made entirely clear that LMS-M is for ITS wireless*--along comes Progeny, *without doing anything with its licenses* (but needing a reason to extend its licenses) to reopen the debate and attack the rules.

Exhibit 1

FCC 06-49: LMS-M NPRM
Telesaurus Ex Parte Filing, May 7, 2007

Form 10-K's (relevant excerpts) for

NATIONAL CITY CORP, 1998 and 1997

(From: <http://www.nationalcity.com/about/InvestorRelations/StockFinancialInfo/default.asp>.)

IPALCO, 1998 and 1997

(From SEC EDGAR website database.)

Notes

In the years reported below, 1997 and 1998, and in 1999, Mr. Frenzel was a Board member of the below bank and the Indiana subsidiary of this bank, and of IPALCO, a utility company: See items in red in these 10-K's, and also [Exhibit 2](#) to this Ex Parte filing.¹

National City Bank. This bank reports below:

Excluding merger and restructuring expenses, net income in 1998 of \$1,332.6 million, or \$4.00 per diluted share, increased 15.2% over 1997's net income of \$1,157.1 million, or \$3.53 per diluted share, and 27.8% over 1996's net income of \$1,042.6 million, or \$3.10 per diluted share. . .

IPALCO. This company reports below

(In Thousands . . .)	1998	1997	1996
-----	-----	-----	-----
Total utility operating revenues	\$ 821,256	\$ 776,427	\$ 762,503

These three years had to be attributed: Forms 175 deadline for this auction was in January 1999. For the above two affiliates of Mr. Frenzel, total of these three years is: \$5.982 billion, for an annual average of \$ 1.964 billion. That is 655 times greater than the \$3 million maximum annual average that qualified for the 35% bidding credit that the applicant "Progeny" certified it was entitled to on its Forms 175 and 601, and that Mr. Frenzel also informed the FCC he was qualified for.

¹ Also, Mr. Frenzel was at the relevant times an officer and director in Merchants National Corporation, listed below on this bank's 1998 10-K. Merchants National Corporation was earlier acquired by this bank. Mr. Frenzel had other affiliates as defined in FCC auction rules, regarding the subject LMS-M auction: see, e.g., [Exhibit 2](#).

Conclusions

Apart from the other affiliates of Mr. Frenzel and the other applicable years, just the attributable gross revenues from either one of these two affiliates causes Progeny LMS LLC (and the other “Progeny” that was utilized the bid in the subject LMS-M auction: Progeny Post: whose FRN and EIN numbers were used: see Exhibit 2 below) to be entirely disqualified from the applied-for and certified 35% bidding discount, and thus disqualified from the auction and grant of any licenses therefrom under 47 CFR §§1.2105, 1.2109, the subject LMS-M Auction Procedures PN, and FCC and court precedents on these rules.

Where, after the form 175 deadline, there is a change of control (including by change of an entity itself) and/or change in DE bidder-discount size, verses what was reported on Form 175, the application and the applicant are disqualified. Here, both of these impermissible changes occurred. Moreover, the evidence that reveal these changes was not reported to the Commission.

Relevant excerpts included below. Emphasis in red added.

The 1998 10-K is first below, then the 1997 10-K.

Form 10-K NATIONAL CITY CORP - ncc Filed: January 25, 1999 (period: December 31, 1998) Annual report which provides a comprehensive overview of the company for the past year

* * * *

2

CORPORATE PROFILE

Headquartered in Cleveland, Ohio, National City is an \$88 billion-asset company providing banking and financial services primarily in Ohio, Michigan, Pennsylvania, Kentucky, Indiana and Illinois.

* * * *

FINANCIAL REVIEW

EARNINGS SUMMARY

National City Corporation ("National City" or "the Corporation") reported net income of \$1,070.7 million, or \$3.22 per diluted share, in 1998, compared to \$1,122.2 million, or \$3.42 per diluted share, in 1997, and \$993.5 million, or \$2.95 per diluted share, in 1996. Included in reported net income were after-tax merger and restructuring expenses of \$261.9 million, or \$.78 per diluted share, in 1998, \$34.9 million, or \$.11 per diluted share, in 1997, and \$49.1 million, or \$.15 per diluted share, in 1996.

Excluding merger and restructuring expenses, **net income in 1998 of \$1,332.6 million**, or \$4.00 per diluted share, increased 15.2% over **1997's net income of \$1,157.1 million**, or \$3.53 per diluted share, and 27.8% over **1996's net income of \$1,042.6 million**, or \$3.10 per diluted share. Results for 1998 and 1997 reflect strong loan and noninterest income growth and lower credit costs.

* * * *

SIGNATURES

Pursuant to the Requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, on January 21, 1999.

National City Corporation

/s/ David A. Daberko

David A. Daberko
Chairman and Chief Executive Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant and in the capacities indicated, on January 21, 1999.

* * * *

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EXHIBIT NUMBER	EXHIBIT DESCRIPTION
-----	-----
* * * *	

- 10.19 Amended Employment Agreement dated July 21, 1989 by and between **Merchants** National Corporation or a subsidiary and **Otto N. Frenzel**, III (filed as Exhibit 10(21) to Merchants National Corporation Annual Report of Form 10-K for the fiscal year ended December 31, 1987 and incorporated herein by reference).
- 10.20 Split Dollar Insurance Agreement dated January 4, 1988 between **Merchants** National Corporation and **Otto N. Frenzel**, III Irrevocable Trust II (filed as Exhibit 10(26) to Merchants National Corporation Annual Report on Form 10-K for the fiscal year ended December 31, 1989 and incorporated herein by reference).
- 10.21 **Merchants** National Corporation Director's Deferred Compensation Plan, as amended and restated August 16, 1983 (filed as Exhibit 10(3) to Merchants National Corporation Registration Statement as Form S-2 filed June 28, 1985, incorporated herein by reference).
- 10.22 **Merchants** National Corporation Supplemental Pension Plan dated November 20, 1984; * * * *

* * * *

- 10.23 **Merchants** National Corporation Employee Benefit Trust Agreement, effective July 1, 1987 * * * *
- 10.24 **Merchants** National Corporation Non-qualified Stock Option Plan effective January 20, 1987, * * * *
- 10.25 **Merchants** National Corporation 1987 Non-qualified Stock Option Plan, effective November 17, 1987 * * * *.
- 10.26 **Merchants** National Corporation Directors Non-qualified Stock Option Plan and * * *

* * * *

1

EXHIBIT 21.1

SUBSIDIARY LISTING

STATE OR JURISDICTION
UNDER THE LAW OF

WHICH ORGANIZED

Advent Guaranty Corporation..... Vermont

* * * *

Merchants Capital Management, Inc..... Indiana

* * * *

National City Bank of Indiana..... United States

* * * *

Western Reserve Company..... Pennsylvania

100% ownership unless otherwise noted:

* * * *

[End 1998 10-K Excerpts]

Form 10-K NATIONAL CITY CORP - ncc Filed: January 30, 1998 (period: **December 31, 1997**) Annual report which provides a comprehensive overview of the company for the past year

* * * *

SIGNATURES

Pursuant to the Requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, on January 21, 1998.

* * * *

50

BOARD OF DIRECTORS/OFFICERS

BOARD OF DIRECTORS

DAVID A. DABERKO (2,3,4)

Chairman & CEO

National City Corporation

* * * *

OTTO N. FRENZEL III (3,4)

Retired Chairman

National City Bank of Indiana

* * * *

53

PAGE NUMBER IN

EXHIBIT

NUMBER

SEQUENTIALLY NUMBERED

EXHIBIT DESCRIPTION

COPY

- - - - -

* * * *

54

* * * *

10.17 Amended Employment Agreement dated July 21, 1989 by and between **Merchants** National Corporation or a subsidiary and **Otto N. Frenzel, III** (filed as Exhibit 10(21) to Merchants National Corporation Annual Report of Form 10-K for the fiscal year ended December 31, 1987 and incorporated herein by reference).

10.18 Split Dollar Insurance Agreement dated January 4, 1988 between Merchants

National Corporation and **Otto N. Frenzel**, III Irrevocable Trust II (filed as Exhibit 10(26) to Merchants National Corporation Annual Report on Form 10-K for the fiscal year ended December 31, 1989 and incorporated herein by reference).

- 10.19 **Merchants** National Corporation Director's Deferred Compensation Plan, as amended and restated August 16, 1983 (filed as Exhibit 10(3) to Merchants National Corporation Registration Statement as Form S-2 filed June 28, 1985, incorporated herein by reference).
- 10.20 **Merchants** National Corporation Supplemental Pension Plan dated November 20, 1984; First Amendment to the Supplemental Pension Plans dated January 21, 1986; Second Amendment to the Supplemental Pension Plans dated July 3, 1989; and Third Amendment to the Supplemental Pension Plans dated November 21, 1990 (filed respectively as exhibit 10(n) to Merchants National Corporation Annual Report on Form 10-K for the year ended December 31, 1984; as Exhibit 10(q) to the Merchants National Corporation Annual Report on Form 10-K for the year ended December 31, 1985; as Exhibit 10(49) to Merchants National Corporation Annual Report on Form 10-K for the year ended December 31, 1990; and as Exhibit 10(50) to the Merchants National Corporation Annual Report on Form 10-K for the year ended December 31, 1990; all incorporated herein by reference).

* * * *

- 10.21 **Merchants** National Corporation Employee Benefit Trust Agreement, effective July 1, 1987 (filed as Exhibit 10(27) to Merchants National Corporation Annual Report on Form 10-K for the year ended December 31, 1987, incorporated herein by reference).
- 10.22 **Merchants** National Corporation Non-qualified Stock Option Plan effective January 20, 1987, and the First Amendment to that Merchants National Non-qualified Stock Option Plan, effective October 16, 1990 (filed respectively as Exhibit 10(23) to Merchants National Corporation Annual Report on Form 10-K by the year ended December 31, 1986, and as Exhibit 10(55) to Merchants National Corporation Annual Report on Form 10-K for the year ended December 31, 1990, both of which are incorporated herein by reference).
- 10.23 **Merchants** National Corporation 1987 Non-qualified Stock Option Plan, effective November 17, 1987, and the First Amendment to Merchants National Corporation 1987 Non-qualified Stock Option Plan, effective October 16, 1990, (filed respectively as Exhibit 10(30) to Merchants National Corporation Annual Report on Form 10-K by the year ended December 31, 1987, and as Exhibit 10(61) to Merchants National Corporation Annual Report on Form 10-K for the year ended December 31, 1990, both of which are incorporated herein by reference).
- 10.24 **Merchants** National Corporation Directors Non-qualified Stock Option Plan and the First Amendment to Merchants National Corporation Directors Non-qualified Stock Option Plan effective October 16, 1990 (filed respectively as Exhibit 10(44) to Merchants National Corporation Annual Report on Form 10-K for the year ended December 31, 1988, and as Exhibit 10(68) to Merchants National Corporation Annual Report on Form 10-K for the year ended December 31, 1990, both of which are incorporated herein by reference).

* * * *

[END 10-K Excerpts]

FORM 10-K

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D. C. 20549

[X] Annual Report Pursuant to Section 13 or 15(d) of the Securities
Exchange Act of 1934

For the fiscal year ended
December 31, 1998

* * * *

IPALCO Enterprises, Inc. (IPALCO) is a holding company and was incorporated under the laws of the state of Indiana on September 14, 1983. IPALCO has 15 employees and has two (2) subsidiaries: Indianapolis Power & Light Company (IPL), a regulated electric and steam service utility, and Mid-America Capital Resources, Inc. (Mid-America), a holding company for unregulated businesses. IPALCO and its subsidiaries are collectively referred to as "Enterprises".

* * * *

Item 6. SELECTED CONSOLIDATED FINANCIAL DATA

<CAPTION>

(In Thousands Except Per Share Amounts)	1998	1997	1996	1995	1994
<S>	<C>	<C>	<C>	<C>	<C>
Total utility operating revenues (1)	\$ 821,256	\$ 776,427	\$ 762,503	\$ 709,206	\$ 686,076

* * * *

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities
Exchange Act of 1934, the Registrant has duly caused this report to be signed on
its behalf by the undersigned, thereunto duly authorized.

IPALCO ENTERPRISES, INC.

By /s/ John R. Hodowal

(John R. Hodowal, Chairman of the Board
and President)

Date: February 23, 1999

Pursuant to the requirements of the Securities Exchange Act of 1934, this
report has been signed below by the following persons on behalf of the

Registrant and in the capacities and on the dates indicated.

Signature	Title	Date
-----	----	----

* * * *

(iv) A majority of the Board of Directors of IPALCO Enterprises, Inc.:

/s/ Joseph D. Barnett, Jr. ----- (Joseph D. Barnett, Jr.)	Director	February 23, 1999
---	----------	-------------------

/s/ Robert A. Borns ----- (Robert A. Borns)	Director	February 23, 1999
---	----------	-------------------

/s/ Mitchell E. Daniels, Jr. ----- (Mitchell E. Daniels, Jr.)	Director	February 23, 1999
---	----------	-------------------

/s/ Rexford C. Early ----- (Rexford C. Early)	Director	February 23, 1999
---	----------	-------------------

/s/ Otto N. Frenzel III ----- (Otto N. Frenzel III)	Director	February 23, 1999
---	----------	-------------------

* * * *

[End IPALCO 1998 10-K excerpts]

FORM 10-K

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D. C. 20549

[X] Annual Report Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

For the fiscal year ended
December 31, 1997

IPALCO ENTERPRISES, INC.
(Exact name of Registrant as specified in its charter)

* * * *

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities
Exchange Act of 1934, the Registrant has duly caused this report to be signed on
its behalf by the undersigned, thereunto duly authorized.

IPALCO ENTERPRISES, INC.

By /s/ John R. Hodowal

(John R. Hodowal, Chairman of the Board
and President)

Date: February 24, 1998

Pursuant to the requirements of the Securities Exchange Act of 1934, this
report has been signed below by the following persons on behalf of the
Registrant and in the capacities and on the dates indicated.

Signature	Title	Date
-----	-----	----

(i) Principal Executive Officer:

/s/ John R. Hodowal ----- (John R. Hodowal)	Chairman of the Board and President	February 24, 1998
---	--	-------------------

(ii) Principal Financial Officer:

/s/ John R. Brehm ----- (John R. Brehm)	Vice President and Treasurer	February 24, 1998
---	---------------------------------	-------------------

(iii) Principal Accounting Officer:

/s/ Stephen J. Plunkett	Controller	February 24, 1998

(Stephen J. Plunkett)		

(iv) A majority of the **Board of Directors of IPALCO Enterprises, Inc.:**

/s/ Joseph D. Barnett, Jr.	Director	February 24, 1998

(Joseph D. Barnett, Jr.)		

/s/ Robert A. Borns	Director	February 24, 1998

(Robert A. Borns)		

/s/ Rexford C. Early	Director	February 24, 1998

(Rexford C. Early)		

/s/ Otto N. Frenzel III	Director	February 24, 1998

(Otto N. Frenzel III)		

* * * *

[\[End Exhibit 1 of FCC filing\]](#)

Exhibit 2

DOCUMENT 1 of 2

FCC 06-49: LMS-M NPRM
Telesaurus Ex Parte Filing,
May 7, 2007

STATE OF INDIANA
OFFICE OF THE SECRETARY OF STATE

CERTIFICATE OF ORGANIZATION

OF

PROGENY LMS, LLC

I, SUE ANNE GILROY, Secretary of State of Indiana, hereby certify that Articles of Organization of the above limited liability company have been presented to me at my office accompanied by the fees prescribed by law and that I have found such Articles conform to the provisions of the Indiana Business Flexibility Act, as amended.

NOW, THEREFORE, ~~I hereby issue~~ to such limited liability company this Certificate of Organization, and further certify that ~~its existence will begin April 16, 1999.~~

Progeny LMS LLC, the LMS licensee, did not exist until well after the auction ended, and after its Form 601 was submitted.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the State of Indiana, at the City of Indianapolis, this Sixteenth day of April, 1999.


Deputy

ARTICLES OF ORGANIZATION
OF
PROGENY LMS, LLC

WMRA
1999041189

The undersigned individual, acting as organizer, hereby forms a limited liability company under the Indiana Business Flexibility Act, as amended from time to time, (the "Act") and adopt the following as the Articles of Organization of the limited liability company:

Article 1. Name. The name of the limited liability company shall be Progeny LMS, LLC (the "Company").

Article 2. Duration. The period of the Company's duration shall expire on December 31, 2025, unless sooner dissolved in accordance with the Act.

Article 3. Purpose. The Company shall have unlimited power to engage in and do any lawful act with respect to any or all lawful businesses for which limited liability companies may be organized under Indiana law, including all powers and purposes now and hereafter permitted by law to a limited liability company.

Article 4. Registered Office and Registered Agent.

4.1 Address. The address of the Registered Office of the Company in Indiana is 20 North Meridian Street, Suite 9000, Indianapolis, IN 46204.

4.2 Agent. The name of the Registered Agent of the Company at the above Registered Office is Michael B. McMains, who is an Indiana resident.

Article 5. Assignment and Additional and Substitute Members. Interests in the Company may only be assigned according to the Operating Agreement or according to the terms and conditions approved by a unanimous vote of all the Members. Furthermore, Additional and Substitute Members of the Company may only be admitted upon the affirmative vote of all the Members.

Article 6. Management. The Company shall be managed by its Members in accordance with the Operating Agreement.

Article 7. Indemnification of Members, Organizer, and Managers.

7.1 Persons Indemnified. To the greatest extent not inconsistent with the laws and public policies of Indiana, the Company shall indemnify any Member, Organizer, Officer, or Manager of the Company (any person who is a Member, Organizer, Officer, or Manager and any responsible officer, partner, shareholder, director, or manager of a Member, Organizer, Officer, or Manager that is an entity, hereinafter being referred to as

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SUE ANN GILROY

the indemnified "Person") made a party to any proceeding because the Person is or was a Member, Organizer, Officer, or Manager of the Company as a matter of right, against all liability incurred by the Person in connection with any proceeding; provided that it shall be determined in the specific case and according to Section 7.8 that indemnification of the Person is permissible in the circumstances because the Person has met the Standard of Conduct for indemnification set forth in Section 7.7.

7.2 Expenses. The Company shall pay for or reimburse the reasonable expenses incurred by a Person in connection with any such proceeding in advance of the final disposition thereof if:

(a) **Written Affirmation.** The Person furnishes to the Company a Written Affirmation of the Person's good faith belief that the Person has met the Standard of Conduct for indemnification described in Section 7.7;

(b) **Written Undertaking.** The Person furnishes to the Company a Written Undertaking (i.e., a general obligation, subject to reasonable limitations by the Company, that need not be secured and may be accepted without regard to the Person's financial ability to repay), executed either personally or on the Person's behalf, to repay the advance if it is ultimately determined that the Person did not meet the Standard of Conduct; and

(c) **Company Determination.** The Company makes a determination, according to Section 7.8 and based on the facts then known to those making the determination, that indemnification would not be precluded under this Article 7.

7.3 Prevailing Party. The Company shall indemnify a Person who is the prevailing party and is wholly successful, on the merits or otherwise, in the defense of any such proceeding, as a matter of right, against reasonable expenses incurred by the individual in connection with the proceeding without making a determination as set forth in Section 7.8.

7.4 Upon Demand. Upon demand by a Person, the Company shall expeditiously determine, in accordance with this Article 7, whether the Person is entitled to indemnification and/or an advance of expenses.

7.5 Applicability. The indemnification and advancement of expenses provided for under this Article 7 shall be applicable to any proceeding arising from acts or omissions occurring before or after the adoption of this Article 7.

7.6 Employee or Agent. The Company shall have the power, but not the obligation, to indemnify any individual who is or was an employee or agent of the Company to the same extent as if such individual was a Person.

7.7 Standard of Conduct.

7.7.1 Meets the Standard. Indemnification of a Person is permissible under this Article 7 only if:

- (a) the Person acted in good faith,
- (b) the Person reasonably believed that the Person's conduct was in, or at least not opposed, to the Company's best interest, and
- (c) in the case of any criminal proceeding, the Person had no reasonable cause to believe the Person's conduct was unlawful.

7.7.2 Falls Below the Standard. Indemnification is not permissible against liability to the extent such liability is the result of willful misconduct, recklessness, or any improperly obtained financial or other benefit to which the individual was not legally entitled.

7.7.3 Evidence. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, by itself, determinative that the Person did not meet the Standard of Conduct described in this Section 7.7.

7.8 Company Determination Procedure. A determination of whether indemnification or advancement of expenses is permissible shall be made by any one of the following procedures:

7.8.1 Non-party Members' Vote. By a majority vote of the Members not at the time parties to the proceeding; or

7.8.2 Special Legal Counsel. By special legal counsel selected by a majority vote of the Members not at the time parties to the proceeding.

7.9 Court Determination of Indemnification. A Person who is a party to a proceeding may apply for indemnification from the Company to the court, if any, conducting the proceeding, or to another court of competent jurisdiction. On receipt of an application, the court, after giving notice, that the court considers necessary or advisable, may order indemnification if it determines:

7.9.1 Prevailing Party. In a proceeding in which the Person is the prevailing party and is wholly successful, on the merits or otherwise, that Person is entitled to indemnification under Article 7, and the court therefore shall Order the Company to pay the Person's reasonable expenses incurred to obtain the court ordered indemnification; or

7.9.2 Equity. The Person is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the Person met the Standard of Conduct set forth in Section 7.7.

7.10 Employee Benefit Plan. Indemnification shall also be provided for a Person's conduct with respect to an employee benefit plan if the Person reasonably believed the Person's conduct to be in the best interests of the participants in and beneficiaries of the plan.

7.11 Non-Exclusive Rights or Remedies. Nothing contained in this Article 7 shall be construed as an exclusive right or remedy or to limit or preclude any other right under the law, by contract or otherwise, regarding indemnification of or advancement of expenses to any Person or other individual who is serving at the Company's request as a Director, Officer, Partner, Manager, Trustee, Employee, or Agent of another foreign or domestic company, partnership, association, limited liability company, corporation, joint venture, trust, employee benefit plan, or other enterprise, whether for-profit or not.

7.11.1 No Limitation. Nothing contained in this Article 7 shall limit the ability of the Company to indemnify and/or advance expenses to any individual other than as provided herein.

7.11.2 Intent. It is the intent of this Article 7 to provide indemnification to Persons to the fullest extent now or hereafter permitted by law and consistent with the terms and conditions of this Article 7.

7.11.3 Legal Theory. Indemnification shall be provided in accordance with this Article 7 irrespective of the nature of the legal or equitable theory upon which a claim is made, including, without limitation, negligence, breach of duty, mismanagement, waste, breach of contract, breach of warranty, strict liability, violation of federal or state securities law, violation of the Employee Retirement Income Security Act of 1974, as amended, or violation of any other state or federal law.

7.12 Definitions. For purposes of this Article 7:

7.12.1 The term "expenses" includes all direct and indirect costs (including without limitation counsel fees, retainers, court costs, transcripts costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or out-of-pocket expenses) actually incurred in connection with the investigation, defense, settlement, or appeal of a proceeding or in establishing or enforcing a right to indemnification under this Article, applicable law, or otherwise.

7.12.2 The term "liability" means the obligation to pay a judgment, settlement, penalty, fine, excise tax (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses incurred with respect to a proceeding.

7.12.3 The term "party" includes an individual who was, is, or is threatened to be made, a named defendant or respondent in a proceeding.

7.12.4 The term "proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil or criminal, administrative or investigative, and whether formal or informal.

On this 18th day of February, 1999 and in accordance with I.C. 23-18-2-4(a), the undersigned organizer hereby executes these Articles of Organization of Progeny LMS, LLC:

ORGANIZER


Michael B. McMains, Esq.

This document was prepared by Michael B. McMains, Esq., McMains, Goodin & Orzeske, P.C., 20 N. Meridian Street, Suite 9000, Indianapolis, IN 46204, (317) 638-7100.

STATE OF INDIANA)
) SS:
 COUNTY OF MARION)

IN THE MARION SUPERIOR COURT
 CIVIL DIVISION
 CAUSE NO. 49D07-9905-CP-0708

OTTO N. FRENZEL, III,)
 PROGENY LMS, LLC, and)
 LMS SPECTRUM PARTNERS, LLC,)

Plaintiffs,)

v.)

CURTIS L. JOHNSON,)
 PROGENY POST, LLC,)
 PROGENY POST LMS, LLC, and)
 LAWRENCE GREEN,)

Defendants.)

FILED

JUN 21 1999

[Signature]
 CLERK OF THE
 MARION CIRCUIT COURT

8:30 AM

AMENDED VERIFIED COMPLAINT

Plaintiffs Otto N. Frenzel, III ("Frenzel"), Progeny LMS, LLC ("LMS") and LMS Spectrum Partners, LLC ("Spectrum"), by their attorneys, for their Amended Verified Complaint against Curtis L. Johnson ("Johnson"), Progeny Post, LLC ("Progeny"), Progeny Post LMS, LLC ("Post") and Lawrence Green ("Green"), allege as follows:

PARTIES

False. See Document 1 above.

1. LMS is a limited liability company organized as of February 18, 1999 under the Indiana Business Flexibility Act, with its registered office in Indianapolis, Indiana. A true and correct copy of the "Articles Of Organization Of Progeny LMS, LLC" ("LMS Articles") is attached as Exhibit A.

2. Spectrum is a limited liability company organized as of February 18, 1999 under

the Indiana Business Flexibility Act, with its registered office in Indianapolis, Indiana. A true and correct copy of the "Articles Of Organization Of LMS Spectrum Partners, LLC" ("Spectrum Articles") is attached as Exhibit B.

Contradicted in FCC filings and below.

3. Frenzel is a resident of Boone County, Indiana and is the sole owner, member and manager of both LMS and Spectrum. Frenzel for years was chairman and chief executive officer of Merchants National Bank in Indianapolis, Indiana, and ~~currently is a director and chairman of the executive committee for that bank's successor, National City Bank, Indiana. Frenzel also sits on the boards of IPALCO Enterprises, Indiana Energy, Inc., and American United Life Insurance Company, and is the immediate past president of the Riley Memorial Association.~~ A true and correct copy of the "Progeny LMS, LLC Operating Agreement" ("LMS Operating Agreement"), which sets forth Frenzel's roles in LMS, is attached as Exhibit C. A true and correct copy of the "LMS Spectrum Partners, LLC Operating Agreement" ("Spectrum Operating Agreement"), which sets forth Frenzel's roles in Spectrum, is attached as Exhibit D.

Frenzel affiliates at time of auction.

Progeny Post

4. Progeny is a limited liability company organized under the Indiana Business Flexibility Act in 1996, with a listed registered office in Indianapolis. State records show that Progeny is not current with its required reports and has not had a registered agent since about April 1998.

5. Upon information and belief, Johnson is a resident of Marion County, Indiana. Johnson is president and one of the two managers for Progeny. Johnson claims to own a majority of the voting interest in Progeny, with Frenzel holding about 10% of the ownership interest and each of several other members, including John H. Barnard ("Barnard"), owning less than 4% of the ownership interest. Barnard is the other manager for Progeny and was its chief financial officer until last year. See Affidavit of John H. Barnard, attached as Exhibit E.

6. Upon information and belief, Green is a resident of Hamilton County, Indiana. Green has worked as an employee of Progeny and, upon information and belief, as an employee and/or independent contractor for one or more subsidiaries of Progeny.

7. According to filings made by Johnson with this Court, Post is a limited liability company organized under the Indiana Business Flexibility Act in 1996, with a listed registered office in Indianapolis. Also according to those filings, Post was originally organized as Progeny Sports Management, LLC ("Management"), but purportedly changed to its current name in about November 1998. According to the filings, ~~Post's sole member is Progeny, which owns 100% of~~ Post's membership interest, and thus is effectively controlled by Johnson.

FACTUAL BACKGROUND

8. Progeny was organized in 1996 to develop and operate interactive sports-related games and sites on the Internet and related ventures. In conjunction with or shortly after Progeny's organization, a number of related limited liability companies, all fully or partially owned by Progeny, were formed as vehicles for Progeny's various planned endeavors. Management/Post was one of those companies.

9. Frenzel became an owner in Progeny in the latter half of 1996 by a purchase of interests made by Johnson and Progeny through a private offering of non-voting membership units that was designed (but markedly failed) to raise about \$2,500,000 of startup cash for Progeny and its subsidiary entities.

10. Within months of the offering, and before any of the planned businesses were ever implemented, the cash raised through the offering had been spent and Progeny was in danger of failing. Johnson approached Frenzel and asked for his financial help to keep Progeny running.

At that time, Frenzel trusted Johnson and believed that Progeny had potential, so he agreed to fund certain Progeny operations through a series of relatively small loans (averaging about \$15,000 to about \$30,000) from his IRA trust account. The total balance of those loans -- which have been Progeny's sole source of funding since early 1997 -- now exceeds \$1 million.

11. Sometime in the latter half of 1996 and early 1997, Frenzel through a foreclosure gained ownership of certain technological hardware and other equipment, and certain licenses that had been issued by the Federal Communications Commission ("FCC") for broadcasting in connection with location monitoring and related services. Frenzel and Johnson agreed that the equipment and licenses could be valuable in a future Progeny venture, so Frenzel transferred those assets to a newly formed company, LMS Comm.net, LLC ("Comm.net") that was owned in equal shares by Frenzel and Progeny. Frenzel's hope to obtain value from Comm.net's equipment and licenses was a primary reason he continued to make the small loans to Progeny.

12. ~~In the fall of 1998, Johnson and Green learned that the FCC was preparing to auction licenses for location and monitoring radio frequencies~~ in a number of areas throughout the United States (the "licenses").

13. In about November 1998, Johnson, in concert with Green, filed a set of "Restated Articles of Organization" for Management with the Indiana Secretary of State. That document purported to record a change of Management's name to ~~"Progeny Post LMS, LLC."~~

14. In about January 1999, Frenzel, Johnson and Green met to discuss the FCC licenses to be sold through auction. Based upon Johnson's and Green's statements, Frenzel believed and stated that the licenses offered a unique opportunity to obtain value from the assets owned by Comm.net, as well as provide other profit opportunities. Johnson and Green then

suggested that Progeny should participate in the auction, with Frenzel providing the needed funds (about \$2 million) through another loan, and Johnson and Green placing the actual bids and otherwise dealing directly with the FCC.

15. Frenzel rejected that suggestion because he did not want to make such a large lump-sum loan to Progeny, and because Johnson and Green had failed to generate any consistent income from Frenzel's two-year stream of smaller loans. However, Frenzel told Johnson and Green that ~~he would fund purchase of the licenses~~ if it resulted in Frenzel owning the licenses, either directly or through a company controlled by him. ~~Frenzel also said that he was willing to share profits from the licenses with Johnson and Green~~ to compensate them for serving as his limited agents or "point men" in the auction and bidding, and later finding profitable uses for the licenses. Frenzel, Johnson and Green all recognized that if the licenses could somehow be used in combination with the technology and other assets of Comm.net, Progeny (and therefore Johnson, as Progeny's 65% owner) would have tremendous new profit opportunities.

16. Johnson and Green ~~orally agreed to Frenzel's terms~~. Johnson further agreed and stated that he would set up a new company through which Frenzel would own the licenses, and that Frenzel's funding would be treated as a contribution to that new company and not as a loan to Progeny. In about the last part of January 1999, Johnson told Frenzel that the new company, which Johnson called "Progeny LMS, LLC," had been formed in accord with Frenzel's wishes.

17. Unbeknownst to Frenzel, Johnson had not formed and never intended to form "Progeny LMS, LLC" or any other company through which Frenzel would own and control the licenses. Instead, Johnson and Green conspired and intended to misappropriate, convert and otherwise misuse Frenzel's money by secretly purchasing the licenses through an entity controlled by Johnson, or diverting the licenses to such an entity after their purchase.

18. After obtaining Frenzel's agreement to fund the bidding, Johnson and Green began executing their plan to misappropriate Frenzel's money and/or deprive him of the licenses.

In about ~~January 1999, Johnson prepared and submitted to the FCC a Form 175 or "short-form"~~ bidding application in the name of ~~"Progeny LMS, LLC."~~ A true and correct copy of that application is attached as Exhibit F. The Form 175, which Johnson did not show or discuss with Frenzel, ~~contained false and misleading statements about the applicant.~~ For example, the Form stated that "Progeny LMS, LLC" had been formed in 1996 and was owned by Progeny, when in fact ~~the company had not been formed at all.~~ Johnson, in concert with Green, deliberately listed the applicant as "Progeny LMS, LLC" on the Form 175, as well as ~~other documents submitted to the FCC, to mislead Frenzel in the event he saw the application.~~

Any controlling owner requires a copy of the organizational documents. Frenzel suggests he did not. Frenzel was a director of a major bank and other corporations.

19. On about February 7, 1999, Johnson, in concert with Green and in furtherance of their plan, directed Frenzel to deposit \$1,879,155 via wire transfer in the name of "Progeny LMS, LLC" in an FCC escrow account in Pittsburgh, Pennsylvania. Frenzel followed Johnson's directions and made the deposit the next day, believing that the payment was made on behalf of the Frenzel-controlled company Johnson said had been formed. The record of that transfer, a true and correct copy of which is attached as Exhibit G, lists the payer as "Progeny LMS LLC." However, unbeknownst to Frenzel the ~~transfer also listed the taxpayer identification number ("TIN"), as provided by Johnson, for Management/Post.~~

Progeny Post was the applicant. Progeny LMS LLC did not even exist.

20. Frenzel relied reasonably and in good faith on Johnson and Green as his agents at all stages of the bidding process. Frenzel made the February 8, 1999 deposit only because he believed, in reliance on Johnson and Green, that Johnson had formed "Progeny LMS, LLC" and that Frenzel owned, controlled and was to own the licenses through that company.

21. Johnson, Progeny and Management/Post have never paid, advanced, contributed

or escrowed any funds of their own toward purchase of the licenses.

22. Johnson and Green also advanced their plan by denying Frenzel key information. During January, February and March 1999, Frenzel repeatedly asked Johnson for specific information and documentation about the formation of "Progeny LMS, LLC," the company's bidding and purchase of the licenses, his payment to the FCC and related issues, but Johnson rebuffed each request. Frenzel renewed his requests after the auction, but never received satisfactory information from Johnson. Frenzel was concerned about Johnson's failures to provide him with information, but justifiably and reasonably relied on Johnson to perform his duties in good faith, to act in accord with his statements and the parties' agreement, and to provide accurate information to the FCC.

23. The license auction was held in several stages from about February 22, 1999 to about March 8, 1999. During this time, ~~Frenzel kept tabs~~ on the auction's progress and bid amounts, conferring frequently with Johnson in person and via telephone. ~~Frenzel approved bids~~ made by Johnson and Green, and in the latter days authorized bids totaling about \$400,000 beyond the escrowed \$1,879,155 so that "Progeny LMS, LLC" could secure licenses providing near-nationwide B-C block the desired frequencies. In all, "Progeny LMS, LLC" was the high bidder for ~~230 of 289~~ licenses sold in the auction.

24. On about March 17, 1999, Frenzel met with Johnson and Green to discuss matters related to the licenses, including a ~~proposed ownership/organizational~~ structure for "Progeny LMS, LLC" that had been prepared by Johnson and Green. Frenzel asked Barnard to attend the meeting and to review the proposed structure, because it was complicated and appeared inconsistent with Frenzel's control of "Progeny LMS, LLC" and the licenses. Frenzel had earlier told Barnard that he (Frenzel) ~~was to~~ own the licenses directly or through a controlled company,

that according to Johnson such a company had been formed, and that he had paid \$1,879,155 toward the purchase of the licenses.

25. During the meeting on about March 17, 1999, Barnard reviewed the proposed structure for "Progeny LMS, LLC" that Johnson and Green had presented. Barnard told Frenzel, Johnson and Green that the proposal appeared unfair and inconsistent with Frenzel's 100% ownership of the licenses, and told Frenzel that he should seek legal advice before accepting the proposal. Frenzel agreed with Barnard, prompting Johnson to complain that any delay in approving the proposal as presented would jeopardize compliance with the March 22, 1999 ~~deadline for submission of the post-auction Form 601 or "long-form" application, which was to provide supplemental detailed information on the applicant.~~ Frenzel left the meeting without approving the proposal or agreeing to any structure for "Progeny LMS, LLC" that gave Frenzel less than full control.

26. On about March 18, 1999, Frenzel met with Johnson, Green, and attorney Steve Dutton ("Dutton") to discuss additional issues related to the licenses. Dutton represented Progeny, but at that time and through at least mid-May 1999 also served as Frenzel's lawyer on matters related to the technology, hardware and other assets of Comm.net.

27. At some point during the meeting, a telephone conference was conducted with ~~one or more Washington, D.C. attorneys who had apparently been retained to provide advice in connection with purchase of the licenses.~~ During that conference, Johnson, Green, Dutton and ~~the Washington attorneys discussed possible methods for ensuring that "Progeny LMS, LLC" would qualify for a 35% "very small business" discount of the licenses' purchase price.~~ Frenzel asked one or two questions about the mechanics of the discount, but otherwise remained silent.

Entirely false. The gross revenues of the applicant, its controlling party, and the controlling party's affiliates all have to be attributed. The unnamed DC attorney would not have advised otherwise.

28. A number of possible methods were discussed, including ~~classifying~~ part or all of Frenzel's \$1,879,155 contribution to "Progeny LMS, LLC" as debt. Nothing in these discussions concerned Frenzel or seemed inconsistent with his ownership and control of the licenses. Based on what Johnson had told him, Frenzel owned and controlled "Progeny LMS, LLC," and that control would not be affected by any of the possible methods being discussed -- even if the \$1,879,155 payment were classified as a "debt" to that company. Moreover, Frenzel had not approved any plan or structure reducing his presumed 100% ownership in "Progeny LMS, LLC." Thus, Frenzel had no reason to question characterization of his payment as a "debt" in order to preserve the "very small business" discount.

Johnson's response to this Complaint's characterizations is in separate documents.

29. At about 4:30 p.m. on Friday, March 19, 1999, Dutton faxed to Frenzel's attorney, Michael McMains, portions of an incomplete draft Form 601 that was filled with false and misleading information. Contrary to prior statements and discussions and the initial Form 175, Dutton's draft for the first time listed the purchaser of the licenses as Spectrum, which it said was a wholly-owned subsidiary of "Progeny LMS, LLC." The draft also falsely showed Frenzel with no direct ownership interest in Spectrum or the licenses, treated Frenzel's February 8, 1999 payment as a loan to Spectrum, claimed that Spectrum had issued a "Master Note" to evidence the debt, and said the loan was "secured by substantially all the assets of Spectrum." Dutton sent no message with the draft, and did not tell McMains that the final Form 601 had to be filed the next business day, March 22, 1999.

30. McMains was not familiar with the Form 601, but was immediately troubled by the draft's discussion of a purported loan to Spectrum and the absence of any mention of Frenzel's ownership in either Spectrum or "Progeny LMS, LLC." McMains called Frenzel, who told him that the fax was wrong in numerous respects, including its recitation of the ownership

structures for Spectrum and "Progeny LMS, LLC" and the discussion of a purported loan.

31. On Monday, March 22, 1999, McMains called Johnson and pointed out critical misstatements in the draft Form 601, including its discussions about the purported loan and the ownership structures of Spectrum and "Progeny LMS, LLC." McMains also reiterated -- in accord with Johnson's statements and agreement with Frenzel, the parties' subsequent discussions and actions, and Frenzel's refusal to consent to anything but 100% ownership -- that the owner of the licenses (whatever its name) was to be controlled by Frenzel

32. Later on March 22, 1999, in concert with Green and in furtherance of their plan to deprive Frenzel of his money and/or the licenses, Johnson filed a finalized version of the Form 601. Frenzel never received the filed version from Johnson, Green or Dutton, and did not see any part of it until mid-May 1999. The filed Form 601 differed in some respects from the March 19 draft, but did not correct the errors McMains pointed out to Johnson. In particular, the final Form 601 repeated without change the false information about applicant ownership and the purported loan by Frenzel to Spectrum.

33. The next day, Johnson, again in concert with Green, sent a letter to the FCC seeking a "minor amendment" in the Form 601 he had filed on ~~March 22~~. That letter did not correct the errors that McMains had pointed out to Johnson and reemphasized the false claim that Spectrum is "wholly-owned" by LMS.

34. ~~Soon after~~ these events, Frenzel confirmed that there was no "Master Note" evidencing any Spectrum debt to Frenzel, and that neither ~~"Progeny LMS, LLC"~~ nor "LMS Spectrum Partners, LLC" ~~had ever been formed or existed in Indiana~~, whether in their own names or as registered "d/b/a" designations for other companies. In an ~~attempt to cure~~ the

serious problems caused by these misstatements in the Form 601, and also to protect his \$1,879,155 investment against possible forfeiture and penalties, Frenzel promptly authorized the organization of LMS and Spectrum with an ~~effective date of February 18, 1999~~ – at least four days before the auction began.

False. The effective date under law is the date on Document 1 above: as the Secretary of State therein states and as Indiana law provides.

35. Johnson and Green continued advancing their plan against Frenzel after the Form 601 was filed. Sometime after March 22, 1999 Johnson delivered a purported promissory note to the National City Bank trust department in Indianapolis. The note falsely claimed that Frenzel's \$1,879,155 payment was actually a loan to Progeny, and not Spectrum or LMS, which contradicted both Frenzel's understanding, as supported by Johnson's statements, and the information contained in the filed Form 601

36. Barnard, one of Progeny's two managers (with Johnson), did not participate in any vote or meeting concerning the purported note tendered by Johnson, and was unaware of such a note until told about it by Frenzel sometime after March 22, 1999

37. Sometime after March 24, 1999, Frenzel received a copy of a letter written by Johnson to Randall Tobias, the former chief executive officer for Eli Lilly & Co. and with whom Frenzel some time earlier had arranged for Johnson to meet. That letter, a true a correct copy of which is attached as Exhibit H, was printed on letterhead that bore the name and a symbol for "Progeny LMS, LLC." Frenzel had never seen such letterhead before. Also, Johnson in that letter referred to himself as the "President and CEO" of "Progeny LMS, LLC" -- neither of which Johnson was authorized to use and which Frenzel had never even discussed with Johnson.

38. After about April 28, 1999, defendants began claiming that their repeated listing of "Progeny LMS, LLC" as applicant for the licenses was a mistake resulting from a

"typographical error" made by Johnson in filings with the Indiana Secretary of State. Defendants also now claim -- notwithstanding their repeated references to "Progeny LMS, LLC" in federally-filed documents, correspondence, and other documents -- that the "true" applicant for the licenses has always been Management/Post, which simply used "Progeny LMS, LLC" as a d/b/a. However, no such d/b/a has ever been registered for Management/Post, and the only entity authorized to conduct business under the name "Progeny LMS, LLC" is LMS, as formed by Frenzel ~~effective February 18, 1999.~~

False. See preceding note.

COUNT I - FRAUD

39. Paragraphs 1 through 38 are incorporated as if fully restated herein.

40. As set forth above, Johnson and Green (individually and as agents for Progeny and Management/Post) made misrepresentations of material fact to Frenzel, all of which were deliberately false, misleading and fraudulent under the Indiana law.

41. Johnson, Progeny and Green knew the misrepresentations were false and fraudulent, and/or made them in reckless ignorance of their falsity.

42. Frenzel reasonably and detrimentally relied on the misrepresentations by, for example, agreeing to fund purchase of the licenses and making the \$1,879,155 payment to the FCC, and has been damaged thereby.

43. The misrepresentations were made willfully, wantonly and maliciously, warranting the imposition and award of punitive damages.

WHEREFORE, Frenzel prays that this Court:

- a. Enter judgment in his favor and against defendants on Count I;
- b. Grant rescission of his agreement to fund purchase of the licenses;
- c. Disgorge and refund his payment to the FCC;
- d. Award him all available compensatory, punitive and other damages, costs, interest, and attorneys' fees; and
- e. Grant him all other just and appropriate relief.

COUNT II – CONSTRUCTIVE FRAUD

44. Paragraphs 1 through 43 are incorporated as if fully restated herein.

45. As set forth above, Johnson and Green (individually and as agents for Progeny and Management/Post) made false and fraudulent factual and promissory misrepresentations to Frenzel.

46. Frenzel, by virtue of his ownership in Progeny, his longstanding business relationship with Johnson, and Johnson's role as Frenzel's agent during the FCC auction, had and continues to have a confidential, fiduciary relationship with Johnson and Progeny.

47. Defendants, by their false and fraudulent misrepresentations, intended to and did gain an unconscionable advantage over Frenzel.

48. The misrepresentations constituted constructive fraud against Frenzel.

49. Frenzel reasonably and detrimentally relied on the misrepresentations and has been damaged thereby.

50. The misrepresentations were made willfully, wantonly and maliciously, warranting the imposition and award of punitive damages.

WHEREFORE, Frenzel prays that this Court:

- a. Enter judgment in his favor and against defendants on Count II:
- b. Award him all available compensatory, punitive and other damages, costs, interest, and attorneys' fees; and
- c. Grant him all other just and appropriate relief.

COUNT III – DECLARATORY JUDGMENT

51. Paragraphs 1 through 50 are incorporated as if fully restated herein.

52. Defendants' various actions and statements -- including but not limited to their false representations in documents submitted to the FCC -- evidence the existence of clear and ripe disputes between the parties -- including disputes about which (if any) of the parties is the true applicant for the licenses, who or what entity owns and controls Spectrum, the character of Frenzel's payment to the FCC on behalf of LMS, and what rights Frenzel has with respect to the licenses.

53. All of these disputes, and particularly the disagreement concerning the applicant's true identity, must be resolved before the licenses can be issued. The FCC has delayed final approval of the licenses pending action by the Court in this case, but upon information and belief, wants all issues resolved and the licenses issued very soon.

54. In addition, a clear and ripe dispute exists concerning whether the "Progeny LMS,

LLC" mentioned repeatedly in the FCC filings is LMS (which was formed effective February 18, 1999, at least four days before the auction began) or is instead Management/Post, as defendants now claim. That dispute is inextricably linked with the question of the applicant's true identity, and must be resolved by this Court in expedited fashion.

WHEREFORE, Frenzel, LMS and Spectrum pray that this Court on an expedited basis, enter a judgment declaring that:

A court cannot change by declaration what was in fact submitted to the FCC on Forms 175 and 601, nor cure violations caused thereby of FCC rules and the Comm. Act.

- a. LMS was properly organized and in existence, effective February 18, 1999, and is wholly owned and controlled by Frenzel;
- b. All references to "Progeny LMS, LLC" in correspondence, forms submitted to the FCC and other documents refer to LMS as formed by Frenzel effective February 18, 1999, and that LMS is the true applicant for the FCC licenses;
- c. Spectrum was properly organized and in existence, effective February 18, 1999, and is wholly owned and controlled by Frenzel; and
- d. Frenzel's payment to the FCC on February 8, 1999 constitutes a contribution to LMS, as organized by Frenzel effective on February 18, 1999, and is not a loan to Progeny, Management/Post, or any other entity not owned and controlled by Frenzel.

A court can't change the dates a LLC became in existence by an accepted filing with the Secretary of State.

Frenzel above said it could be "characterized" as a loan.

COUNT IV -- VIOLATION OF INDIANA SECURITIES STATUTE

55. Paragraphs 1 through 54 are incorporated as if fully restated herein.

56. As set forth above, Johnson and/or Green (individually and as agents for Progeny)

made one or more misrepresentations of material fact in connection with Johnson's tender of the purported note delivered to National City Bank sometime after March 22, 1999, and in so doing employed a device, scheme and artifice to defraud Frenzel of his money and/or the licenses.

57. Johnson's and Green's misrepresentations and actions violated Ind. Code §§ 23-2-1-12 and 23-2-1-19.

58. Frenzel reasonably and detrimentally relied upon, and did not know about or participate in, Johnson's and Green's misrepresentations and actions.

59. Frenzel has suffered damages from the misrepresentations and actions.

60. Johnson's, Progeny's and Green's conduct was willful, wanton and malicious.

WHEREFORE, Frenzel prays that this Court:

- a. Enter judgment in his favor and against Johnson, Green and Progeny on Count IV;
- b. ~~Grant rescission of Frenzel's agreement to pay and ultimate payment of funds to the FCC toward purchase of the licenses;~~
- c. Award him all available compensatory, punitive and other damages, costs, interest, and attorneys' fees; and
- d. Grant him all other just and appropriate relief.

COUNT V -- CRIMINAL MISCHIEF

61. Paragraphs 1 through 60 are incorporated as if fully restated herein.

62. As set forth above, the actions of Johnson and Green (individually and as agents for Progeny and Management/Post) constituted a wrongful taking, deprivation and assertion of control of property belonging to Frenzel for their own use and benefit.

63. Johnson's and Green's actions constitute criminal mischief as defined in Ind. Code § 35-43-1-2, because Johnson and Green have recklessly, knowingly or intentionally damaged Frenzel's property without his consent, and have knowingly or intentionally caused Frenzel to suffer financial loss by deception or by expression of intent to injure, damage or impair his rights or the rights of another person.

64. Frenzel has been damaged by Johnson's and Green's actions.

65. Johnson's and Green's conduct has been willful, wanton and malicious.

WHEREFORE, Frenzel prays that this Court:

- a. Enter judgment in Frenzel's favor and against defendants on Count V;
- b. Award Frenzel compensatory damages, punitive damages and statutory damages under Ind. Code § 34-24-3-1 in an amount to be determined at trial;
- c. Award Frenzel pre-judgment and post-judgment interest, costs and attorneys' fees; and
- d. Grant Frenzel all other just and appropriate relief.

COUNT VI – THEFT

66. Paragraphs 1 through 65 are incorporated as if fully restated herein.

67. As set forth above, the actions of Johnson and Green (individually and as agents for Progeny and Management/Post) constitute a wrongful taking, deprivation and assertion of control of property belonging to Frenzel for their own use and benefit.

68. Defendants' actions constitute theft as defined at Ind. Code § 35-43-4-2, because defendants have knowingly or intentionally exerted unauthorized control over Frenzel's property with intent to deprive him of its value or use.

69. Frenzel has been damaged by defendants' actions.

70. Defendants' conduct has been willful, wanton and malicious.

WHEREFORE, Frenzel prays that this Court:

- a. Enter judgment in Frenzel's favor and against defendants on Count VI;
- b. Award Frenzel compensatory damages, punitive damages and statutory damages under Ind. Code § 34-24-3-1 in an amount to be determined at trial;
- c. Award Frenzel pre-judgment and post-judgment interest, costs and attorneys' fees; and
- d. Grant Frenzel all other just and appropriate relief.

COUNT VII – CONVERSION

71. Paragraphs 1 through 70 are incorporated as if fully restated herein.

72. As set forth above, the actions of Johnson and Green (individually and as agents for Progeny and Management/Post) constitute a wrongful taking, deprivation and assertion of

control of property belonging to Frenzel for their own use and benefit.

73. Defendants' actions constitute conversion as defined at Ind. Code § 35-43-4-2, because Johnson and Green have knowingly or intentionally exerted unauthorized control over Frenzel's property.

74. Frenzel has been damaged by defendants' actions.

75. Defendants' conduct has been willful, wanton and malicious.

WHEREFORE, Frenzel prays that this Court:

- a. Enter judgment in Frenzel's favor and against defendants on Count VII;
- b. Award Frenzel compensatory damages, punitive damages and statutory damages under Ind. Code § 34-24-3-1 in an amount to be determined at trial;
- c. Award Frenzel pre-judgment and post-judgment interest, costs and attorneys' fees; and
- d. Grant Frenzel all other just and appropriate relief.

COUNT VIII -- DECEPTION

76. Paragraphs 1 through 75 are incorporated as if fully restated herein.

77. As set forth above, the actions of Johnson and Green (individually and as agents for Progeny and Management/Post) constitute a wrongful taking, deprivation and assertion of control of property belonging to Frenzel for their own use and benefit.

78. Defendants' actions constitute deception as defined at Ind. Code § 35-43-4-2,

because they knowingly or intentionally made one or more false or misleading written statements with intent to obtain property belonging to Frenzel, and misapplied property entrusted to him by Frenzel in a manner that they knew was unlawful and/or involved a substantial risk of loss or detriment to Frenzel.

79. Frenzel has been damaged by defendants' actions.

80. Defendants' conduct has been willful, wanton and malicious.

WHEREFORE, Frenzel prays that this Court:

- a. Enter judgment in Frenzel's favor and against defendants on Count VIII;
- b. Award Frenzel compensatory damages, punitive damages and statutory damages under Ind. Code § 34-24-3-1 in an amount to be determined at trial;
- c. Award Frenzel pre-judgment and post-judgment interest, costs and attorneys' fees; and
- d. Grant Frenzel all other just and appropriate relief.

COUNT IX – FRAUD ON FINANCIAL INSTITUTION

81. Paragraphs 1 through 80 are incorporated as if fully restated herein.

82. As set forth above, the actions of Johnson and Green (individually and as agents for Progeny and Management/Post) constitute a wrongful attempt to obtain and assert control over funds that Frenzel deposited with and that are currently in the custody and control of Mellon Bank in Pittsburgh, Pennsylvania.

83. Mellon Bank is a state or federally chartered or federally insured financial institution.

84. Defendants' actions constitute fraud on a financial institution as defined at Ind. Code § 35-43-5-8, because defendants have knowingly executed or attempted to execute a scheme or artifice to obtain funds in the custody or control of Mellon Bank by means of false or fraudulent pretenses, representations or promises, as set forth above.

85. Frenzel has been damaged by defendants' actions.

86. Defendants' conduct has been willful, wanton and malicious.

WHEREFORE, Frenzel prays that this Court:

- a. Enter judgment in Frenzel's favor and against defendants on Count IX;
- b. Award Frenzel compensatory damages, punitive damages and statutory damages under Ind. Code § 34-24-3-1 in an amount to be determined at trial;
- c. Award Frenzel pre-judgment and post-judgment interest, costs and attorneys' fees; and
- d. Grant Frenzel all other just and appropriate relief.

COUNT X – FALSE INFORMATION TO GOVERNMENT ENTITY

87. Paragraphs 1 through 86 are incorporated as if fully restated herein.

88. As set forth above, the actions of Johnson (individually and as agent for Progeny and Management/Post) constitute the provision of false information to a government entity as

defined at Ind. Code § 35-43-5-8, because Johnson has knowingly or intentionally provided false information to the FCC in an attempt to obtain contracts (purchase of the licenses) from that agency.

89. Frenzel, LMS and Spectrum have been damaged by Johnson's actions.

90. Johnson's conduct has been willful, wanton and malicious.

WHEREFORE, Frenzel, LMS and Spectrum pray that this Court:

- a. Enter judgment in their favor and against Johnson, Progeny and Management/Post on Count IX;
- b. Award them compensatory damages, punitive damages and statutory damages under Ind. Code § 34-24-3-1 in an amount to be determined at trial;
- c. Award them pre-judgment and post-judgment interest, costs and attorneys' fees; and
- d. Grant them all other just and appropriate relief.

COUNT XI – BREACH OF CONTRACT

91. Paragraphs 1 through 90 are incorporated as if fully restated herein.

92. Johnson's agreements with Frenzel -- including without limitation his agreements to use and characterize Frenzel's funding only as directed and desired by Frenzel, and to form a new company that Frenzel would control and through which Frenzel would own the licenses -- were binding and enforceable legal obligations by Johnson and Progeny.

93. Johnson's actions and omissions -- including without limitation his failure to form "Progeny LMS, LLC" as a company controlled by Frenzel and his misuse and mischaracterization of Frenzel's funding -- have breached the agreements with Frenzel and constitute one or more unexcused failures to perform the contractual obligations.

94. Frenzel has performed all of his obligations and satisfied all conditions under the agreements.

95. Frenzel has been damaged by Johnson's and Progeny's actions, failures and breaches.

WHEREFORE, Frenzel prays that this Court:

- a. Enter judgment in Frenzel's favor and against Johnson and Progeny on Count XI;
- b. Award Frenzel damages in an amount to be determined at trial;
- c. Award Frenzel pre-judgment and post-judgment interest, costs and attorneys' fees; and
- d. Grant Frenzel all other just and appropriate relief.

COUNT XII -- RESCISSION FOR MUTUAL MISTAKE

96. Paragraphs 1 through 95 are incorporated as if fully restated herein.

97. The agreement between Frenzel and Johnson (individually and as agent for Progeny) for Frenzel to advance \$1,879,155 to the FCC was based on the shared, common assumption that the applicant for the licenses was "Progeny LMS, LLC." That common

assumption is shown in Frenzel's payment on behalf of "Progeny LMS LLC," and also in Johnson's repeated filing of FCC papers in the name of "Progeny LMS, LLC."

98. The true identity of the applicant for the licenses was a vital fact upon which the parties' agreement was based and was a material component of the bargain.

99. ~~Frenzel and Johnson (individually and as agent for Progeny) were mutually mistaken about the true identity of the applicant for the licenses.~~ As a result of that mutual mistake, the actual exchange of values embodied in the parties' agreement was quite different from the contemplated exchange.

That is preposterous: two very experienced businessmen and neither knew that a legal entity they alleged to control and that took multiple major actions before the FCC and Mellon Bank did not even exist.

100. Frenzel has suffered damages through performance of the agreement (and payment of his \$1,879,155) as a result of the parties' mutual mistake.

101. Frenzel has received no benefits under the agreement or from his payment of money to the FCC, and is entitled to a full rescission and repayment of the money.

WHEREFORE, Frenzel prays that this Court:

- a. Enter judgment for him and against Johnson and Progeny on Count XII;
- b. ~~Grant rescission of Frenzel's and Johnson's agreement for Frenzel to advance funds to the FCC in conjunction with the license auction;~~
- c. ~~Return the funds paid by Frenzel,~~ with appropriate interest, so that Frenzel is returned to the status quo that existed before the agreement was formed; and
- d. Grant Frenzel all other just and appropriate relief.

Rescission and refund would require asking the FCC to return the funds deposited. That is contrary to the position that Frenzel took before the FCC.

-

COUNT XIII -- PROMISSORY ESTOPPEL

102. Paragraphs 1 through 101 are incorporated as if fully restated herein.

103. As set forth above, Johnson (individually and as agent for Progeny) made several clear and definite promises to Frenzel, including without limitation promises to form a new company through which Frenzel would own and control the licenses, and to treat any contribution by Frenzel as a contribution to that new company.

104. Frenzel reasonably and justifiably relied to his detriment on those promises, which Johnson deliberately failed to keep, and Frenzel suffered damages as a result.

105. Enforcement of Johnson's promises is required as a matter of justice, so that Frenzel will be restored to his pre-promise position and reimbursed for the losses he suffered from Johnson's failure to keep the promises.

WHEREFORE, Frenzel prays that this Court:

- a. Enter judgment in Frenzel's favor and against Johnson and Progeny on Count XIII;
- b. Award Frenzel damages in an amount to be determined at trial;
- c. Award Frenzel pre-judgment and post-judgment interest, costs and attorneys' fees; and
- d. Grant Frenzel all other just and appropriate relief.

COUNT XIV – CIVIL CONSPIRACY

106. Paragraphs 1 through 105 are incorporated as if fully restated herein.

107. As set forth above, Johnson and Green have worked in concert and conspired to deprive Frenzel of his money and/or the licenses, to substitute Management/Post for LMS as the true applicant for the FCC licenses, to remove or cloud Frenzel's clear ownership and control of Spectrum, and to inflict other damages upon plaintiffs, all for their own benefits and purpose.

108. Johnson and Green are liable for civil conspiracy, because, as set forth above, they have combined and worked by concerted action to accomplish an unlawful purpose or to accomplish some lawful purpose by unlawful means.

109. Frenzel has suffered damages from Johnson's and Green's concerted wrongful conduct.

110. Johnson's and Green's conduct was willful, wanton and malicious.

WHEREFORE, Frenzel, LMS and Spectrum pray that this Court:

- a. Enter judgment in their favor and against Johnson and Green on Count XIV;
- b. Award them all available compensatory, punitive and other damages, costs, interest, and attorneys' fees; and
- c. Grant them all other just and appropriate relief.

COUNT XV -- CORRUPT BUSINESS INFLUENCE

111. Paragraphs 1 through 110 are incorporated as if fully restated herein.

112. Johnson's and Green's various wrongful actions, including without limitation their separate violations of Ind. Code §§ 23-2-1-12 and 23-2-1-19 (securities statute) and Ind. Code § 35-43-4-2 (theft statute), constitute a pattern of racketeering activity as defined at Ind. Code § 35-45-6-1.

113. Johnson and Green have knowingly and intentionally received proceeds through their pattern of racketeering activity and have used or invested those proceeds or proceeds derived from them to acquire an interest in property or to operate an enterprise, in violation of Ind. Code § 35-45-6-2(1).

114. Johnson and Green, through their pattern of racketeering activity, have knowingly or intentionally acquired or maintained a direct or indirect interest in or control of property or an enterprise, in violation of Ind. Code § 35-45-6-2(2).

115. Frenzel has been damaged by Johnson's and Green's actions.

116. Johnson's and Green's conduct has been willful, wanton and malicious.

WHEREFORE, Frenzel prays that this Court:

- a. Enter judgment in Frenzel's favor and against Johnson and Green on Count XV;
- b. Award Frenzel compensatory damages, punitive damages and statutory damages under Ind. Code § 34-24-2-6 in an amount to be determined at trial;

- c. Award Frenzel pre-judgment and post-judgment interest, costs and attorneys' fees; and
- d. Grant Frenzel all other just and appropriate relief.

COUNT XVI -- INJUNCTIVE RELIEF

117. Paragraphs 1 through 116 are incorporated as if fully restated herein.

118. The actions and statements of Johnson and Green (individually and as agents for Progeny and Management/Post) -- including but not limited to their false representations about the true identity of the license applicant, their false characterization of Frenzel's payment to the FCC, and their false statements concerning the ownership of Spectrum in documents submitted to the FCC -- are part of a continuing pattern of wrongful and illegal conduct that continues to violate Frenzel's rights as sole owner, member and manager of Spectrum, casts doubt on the structures of LMS and Spectrum, enables the defendants to misuse and profit from funds obtained from Frenzel through fraud and other wrongful conduct, and subjects Frenzel, LMS and Spectrum to potentially severe losses.

119. Defendants' wrongful actions will continue to cause irreparable harm to Frenzel, LMS and Spectrum unless enjoined by this Court. For example, defendants claim in FCC documents that Spectrum is owned by Progeny and Management/Post, when in fact the company is wholly owned by Frenzel, and deny that LMS, which was organized with an existence effective as of February 18, 1999, is the true applicant for the licenses. Defendants also continue to benefit from the fraudulent and other wrongful acts they have perpetrated against Frenzel.

120. Defendants' continuing wrongful actions have harmed and will continue to harm

LMS, Spectrum and Frenzel in ways that cannot be remedied by damages, and/or with the result that any damages suffered cannot be calculated or even reasonably estimated. If the actions of defendants are not enjoined, the integrity, viability and business reputation of Frenzel, Spectrum and LMS will be severely and permanently damaged. Conversely, defendants will suffer no harm from an injunction that simply requires them to act legally, with respect for Frenzel's rights as owner of Spectrum and LMS, and otherwise consistent with the January 1999 agreement between Frenzel and Johnson and this Court's orders. ~~Moreover, given the clearly wrongful character of defendants' conduct, and its impact on the ownership of licenses for broadcast frequencies controlled by the federal government,~~ the public interest would not be disserved by entry of such an injunction.

123. In addition, plaintiffs are entitled to an injunction pursuant to Ind. Code § 34-24-2-6(a), because they have suffered and continue to suffer from corrupt business influence as set out in Count XV above.

WHEREFORE, plaintiffs pray that this Court, on an expedited basis, enter a judgment preliminarily and permanently enjoining defendants directly or indirectly from:

- a. Making false or misleading statements to the FCC or any other person or authority concerning ownership, management, membership or control of the applicant for the licenses, including statements reflecting directly or indirectly that Frenzel does not own and control Spectrum;
- b. Denying that "Progeny LMS, LLC," as listed in the documents filed with the FCC, is LMS and not Management/Post;
- c. Using funds obtained from Frenzel through fraud or other wrongful means to

Progeny LMS LLC did not exist until well after the auction. A judgement can't change that, nor cure violation of FCC rules, but--

--but such lawsuit could serve to cause a settlement, as happened. A settlement does not change facts that took place.

purchase, secure rights to or otherwise affect any issuance of the licenses;

- d. Taking any action that is inconsistent with Frenzel's ownership and control of Spectrum or with the January 1999 agreement between Frenzel and Johnson;
- e. Transferring, selling or encumbering, and negotiating or attempting to make any unauthorized transfer, sale or encumbrance of any of the licenses and any related present or future assets; and
- f. Causing or engaging in corrupt business influence.

JURY DEMAND

Plaintiffs demand a jury trial on all claims and issues so triable.

Respectfully submitted,

McMAINS, GOODIN & ORZESKE, P.C.



Michael B. McMains (17075-49)




Matthew Foster (16400-49)

McMAINS, GOODIN & ORZESKE, P.C.
20 North Meridian Street, Suite 9000
Indianapolis, Indiana 46204
Telephone: 317-638-7100
Telecopier: 317-638-7171

VERIFICATION

~~I, Otto N. Frenzel, III, declare under the penalties for perjury that the foregoing
factual representations are true and correct.~~

Date: 6-18-99


~~Otto N. Frenzel, III~~

CERTIFICATE OF SERVICE

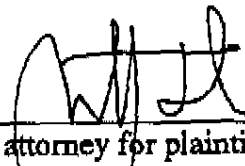
I certify that on this 21st day of June, 1999, I caused a copy of the foregoing "Amended Verified Complaint" to be served via first-class United States mail, postage prepaid, on the following:

Scott R. Leisz
William M. Braman
McHALE, COOK & WELCH
320 North Meridian Street
Suite 1100
Indianapolis, IN 46204

and by certified mail, return receipt requested, on the following:

Lawrence R. Green
12188 Windsor West Drive
Fishers, IN 46038

Progeny Post LMS, LLC
c/o Curtis L. Johnson
10 West Market Street, Suite 500
Indianapolis, IN 46204


An attorney for plaintiffs

EXHIBIT

A

**ARTICLES OF ORGANIZATION
OF
PROGENY LMS, LLC**

The undersigned individual, acting as organizer, hereby forms a limited liability company under the Indiana Business Flexibility Act, as amended from time to time, (the "Act") and adopt the following as the Articles of Organization of the limited liability company:

Article 1. Name. The name of the limited liability company shall be Progeny LMS, LLC (the "Company").

Article 2. Duration. The period of the Company's duration shall expire on December 31, 2025, unless sooner dissolved in accordance with the Act.

Article 3. Purpose. The Company shall have unlimited power to engage in and do any lawful act with respect to any or all lawful businesses for which limited liability companies may be organized under Indiana law, including all powers and purposes now and hereafter permitted by law to a limited liability company.

Article 4. Registered Office and Registered Agent.

4.1 Address. The address of the Registered Office of the Company in Indiana is 20 North Meridian Street, Suite 9000, Indianapolis, IN 46204.

4.2 Agent. The name of the Registered Agent of the Company at the above Registered Office is Michael B. McMains, who is an Indiana resident.

Article 5. Assignment and Additional and Substitute Members. Interests in the Company may only be assigned according to the Operating Agreement or according to the terms and conditions approved by a unanimous vote of all the Members. Furthermore, Additional and Substitute Members of the Company may only be admitted upon the affirmative vote of all the Members.

Article 6. Management. The Company shall be managed by its Members in accordance with the Operating Agreement.

Article 7. Indemnification of Members, Organizer, and Managers.

7.1 Persons Indemnified. To the greatest extent not inconsistent with the laws and public policies of Indiana, the Company shall indemnify any Member, Organizer, Officer, or Manager of the Company (any person who is a Member, Organizer, Officer, or Manager and any responsible officer, partner, shareholder, director, or manager of a Member, Organizer, Officer, or Manager that is an entity, hereinafter being referred to as

the indemnified "Person") made a party to any proceeding because the Person is or was a Member, Organizer, Officer, or Manager of the Company as a matter of right, against all liability incurred by the Person in connection with any proceeding; provided that it shall be determined in the specific case and according to Section 7.8 that indemnification of the Person is permissible in the circumstances because the Person has met the Standard of Conduct for indemnification set forth in Section 7.7.

7.2 Expenses. The Company shall pay for or reimburse the reasonable expenses incurred by a Person in connection with any such proceeding in advance of the final disposition thereof if:

(a) **Written Affirmation.** The Person furnishes to the Company a Written Affirmation of the Person's good faith belief that the Person has met the Standard of Conduct for indemnification described in Section 7.7;

(b) **Written Undertaking.** The Person furnishes to the Company a Written Undertaking (i.e., a general obligation, subject to reasonable limitations by the Company, that need not be secured and may be accepted without regard to the Person's financial ability to repay), executed either personally or on the Person's behalf, to repay the advance if it is ultimately determined that the Person did not meet the Standard of Conduct; and

(c) **Company Determination.** The Company makes a determination, according to Section 7.8 and based on the facts then known to those making the determination, that indemnification would not be precluded under this Article 7.

7.3 Prevailing Party. The Company shall indemnify a Person who is the prevailing party and is wholly successful, on the merits or otherwise, in the defense of any such proceeding, as a matter of right, against reasonable expenses incurred by the individual in connection with the proceeding without making a determination as set forth in Section 7.8.

7.4 Upon Demand. Upon demand by a Person, the Company shall expeditiously determine, in accordance with this Article 7, whether the Person is entitled to indemnification and/or an advance of expenses.

7.5 Applicability. The indemnification and advancement of expenses provided for under this Article 7 shall be applicable to any proceeding arising from acts or omissions occurring before or after the adoption of this Article 7.

7.6 Employee or Agent. The Company shall have the power, but not the obligation, to indemnify any individual who is or was an employee or agent of the Company to the same extent as if such individual was a Person.

7.7 Standard of Conduct.

7.7.1 Meets the Standard. Indemnification of a Person is permissible under this Article 7 only if:

- (a) the Person acted in good faith,
- (b) the Person reasonably believed that the Person's conduct was in, or at least not opposed, to the Company's best interest, and
- (c) in the case of any criminal proceeding, the Person had no reasonable cause to believe the Person's conduct was unlawful.

7.7.2 Falls Below the Standard. Indemnification is not permissible against liability to the extent such liability is the result of willful misconduct, recklessness, or any improperly obtained financial or other benefit to which the individual was not legally entitled.

7.7.3 Evidence. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, by itself, determinative that the Person did not meet the Standard of Conduct described in this Section 7.7.

7.8 Company Determination Procedure. A determination of whether indemnification or advancement of expenses is permissible shall be made by any one of the following procedures:

7.8.1 Non-party Members' Vote. By a majority vote of the Members not at the time parties to the proceeding; or

7.8.2 Special Legal Counsel. By special legal counsel selected by a majority vote of the Members not at the time parties to the proceeding.

7.9 Court Determination of Indemnification. A Person who is a party to a proceeding may apply for indemnification from the Company to the court, if any, conducting the proceeding, or to another court of competent jurisdiction. On receipt of an application, the court, after giving notice, that the court considers necessary or advisable, may order indemnification if it determines:

7.9.1 Prevailing Party. In a proceeding in which the Person is the prevailing party and is wholly successful, on the merits or otherwise, that Person is entitled to indemnification under Article 7, and the court therefore shall Order the Company to pay the Person's reasonable expenses incurred to obtain the court ordered indemnification; or

7.9.2 Equity. The Person is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the Person met the Standard of Conduct set forth in Section 7.7.

7.10 Employee Benefit Plan. Indemnification shall also be provided for a Person's conduct with respect to an employee benefit plan if the Person reasonably believed the Person's conduct to be in the best interests of the participants in and beneficiaries of the plan.

7.11 Non-Exclusive Rights or Remedies. Nothing contained in this Article 7 shall be construed as an exclusive right or remedy or to limit or preclude any other right under the law, by contract or otherwise, regarding indemnification of or advancement of expenses to any Person or other individual who is serving at the Company's request as a Director, Officer, Partner, Manager, Trustee, Employee, or Agent of another foreign or domestic company, partnership, association, limited liability company, corporation, joint venture, trust, employee benefit plan, or other enterprise, whether for-profit or not.

7.11.1 No Limitation. Nothing contained in this Article 7 shall limit the ability of the Company to indemnify and/or advance expenses to any individual other than as provided herein.

7.11.2 Intent. It is the intent of this Article 7 to provide indemnification to Persons to the fullest extent now or hereafter permitted by law and consistent with the terms and conditions of this Article 7.

7.11.3 Legal Theory. Indemnification shall be provided in accordance with this Article 7 irrespective of the nature of the legal or equitable theory upon which a claim is made, including, without limitation, negligence, breach of duty, mismanagement, waste, breach of contract, breach of warranty, strict liability, violation of federal or state securities law, violation of the Employee Retirement Income Security Act of 1974, as amended, or violation of any other state or federal law.

7.12 Definitions. For purposes of this Article 7:

7.12.1 The term "expenses" includes all direct and indirect costs (including without limitation counsel fees, retainers, court costs, transcripts costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or out-of-pocket expenses) actually incurred in connection with the investigation, defense, settlement, or appeal of a proceeding or in establishing or enforcing a right to indemnification under this Article, applicable law, or otherwise.

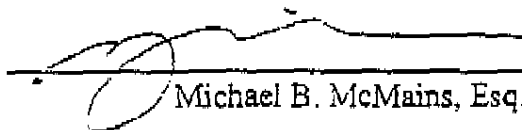
7.12.2 The term "liability" means the obligation to pay a judgment, settlement, penalty, fine, excise tax (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses incurred with respect to a proceeding.

7.12.3 The term "party" includes an individual who was, is, or is threatened to be made, a named defendant or respondent in a proceeding.

7.12.4 The term "proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil or criminal, administrative or investigative, and whether formal or informal.

On this 18th day of February, 1999 and in accordance with I.C. 23-18-2-4(a), the undersigned organizer hereby executes these Articles of Organization of Progeny LMS, LLC:

ORGANIZER


Michael B. McMains, Esq.

This document was prepared by Michael B. McMains, Esq., McMains, Goodin & Orzeske, P.C., 20 N. Meridian Street, Suite 9000, Indianapolis, IN 46204, (317) 638-7100.

EXHIBIT

B

APPROVED
AND
FILED
IND. SECRETARY OF STATE

ARTICLES OF ORGANIZATION
OF
LMS SPECTRUM PARTNERS, LLC

RECEIVED
99 APR 13 PM 1:07
SUE ANNE GILROY

The undersigned individual, acting as organizer, hereby forms a limited liability company under the Indiana Business Flexibility Act, as amended from time to time, (the "Act") and adopt the following as the Articles of Organization of the limited liability company:

Article 1. Name. The name of the limited liability company shall be LMS Spectrum Partners, LLC (the "Company").

Article 2. Duration. The period of the Company's duration shall expire on December 31, 2025, unless sooner dissolved in accordance with the Act.

Article 3. Purpose. The Company shall have unlimited power to engage in and do any lawful act with respect to any or all lawful businesses for which limited liability companies may be organized under Indiana law, including all powers and purposes now and hereafter permitted by law to a limited liability company.

Article 4. Registered Office and Registered Agent.

4.1 Address. The address of the Registered Office of the Company in Indiana is 20 North Meridian Street, Suite 9000, Indianapolis, IN 46204.

4.2 Agent. The name of the Registered Agent of the Company at the above Registered Office is Michael B. McMains, who is an Indiana resident.

Article 5. Assignment and Additional and Substitute Members. Interests in the Company may only be assigned according to the Operating Agreement or according to the terms and conditions approved by a unanimous vote of all the Members. Furthermore, Additional and Substitute Members of the Company may only be admitted upon the affirmative vote of all the Members.

Article 6. Management. The Company shall be managed by its Members in accordance with the Operating Agreement.

Article 7. Indemnification of Members, Organizer, and Managers.

7.1 Persons Indemnified. To the greatest extent not inconsistent with the laws and public policies of Indiana, the Company shall indemnify any Member, Organizer, Officer, or Manager of the Company (any person who is a Member, Organizer, Officer, or Manager and any responsible officer, partner, shareholder, director, or manager of a Member, Organizer, Officer, or Manager that is an entity, hereinafter being referred to as

the indemnified "Person") made a party to any proceeding because the Person is or was a Member, Organizer, Officer, or Manager of the Company as a matter of right, against all liability incurred by the Person in connection with any proceeding; provided that it shall be determined in the specific case and according to Section 7.8 that indemnification of the Person is permissible in the circumstances because the Person has met the Standard of Conduct for indemnification set forth in Section 7.7.

7.2 Expenses. The Company shall pay for or reimburse the reasonable expenses incurred by a Person in connection with any such proceeding in advance of the final disposition thereof if:

(a) **Written Affirmation.** The Person furnishes to the Company a Written Affirmation of the Person's good faith belief that the Person has met the Standard of Conduct for indemnification described in Section 7.7;

(b) **Written Undertaking.** The Person furnishes to the Company a Written Undertaking (i.e., a general obligation, subject to reasonable limitations by the Company, that need not be secured and may be accepted without regard to the Person's financial ability to repay), executed either personally or on the Person's behalf, to repay the advance if it is ultimately determined that the Person did not meet the Standard of Conduct; and

(c) **Company Determination.** The Company makes a determination, according to Section 7.8 and based on the facts then known to those making the determination, that indemnification would not be precluded under this Article 7.

7.3 Prevailing Party. The Company shall indemnify a Person who is the prevailing party and is wholly successful, on the merits or otherwise, in the defense of any such proceeding, as a matter of right, against reasonable expenses incurred by the individual in connection with the proceeding without making a determination as set forth in Section 7.8.

7.4 Upon Demand. Upon demand by a Person, the Company shall expeditiously determine, in accordance with this Article 7, whether the Person is entitled to indemnification and/or an advance of expenses.

7.5 Applicability. The indemnification and advancement of expenses provided for under this Article 7 shall be applicable to any proceeding arising from acts or omissions occurring before or after the adoption of this Article 7.

7.6 Employee or Agent. The Company shall have the power, but not the obligation, to indemnify any individual who is or was an employee or agent of the Company to the same extent as if such individual was a Person.

7.7 Standard of Conduct.

7.7.1 Meets the Standard. Indemnification of a Person is permissible under this Article 7 only if:

- (a) the Person acted in good faith,
- (b) the Person reasonably believed that the Person's conduct was in, or at least not opposed, to the Company's best interest, and
- (c) in the case of any criminal proceeding, the Person had no reasonable cause to believe the Person's conduct was unlawful.

7.7.2 Falls Below the Standard. Indemnification is not permissible against liability to the extent such liability is the result of willful misconduct, recklessness, or any improperly obtained financial or other benefit to which the individual was not legally entitled.

7.7.3 Evidence. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, by itself, determinative that the Person did not meet the Standard of Conduct described in this Section 7.7.

7.8 Company Determination Procedure. A determination of whether indemnification or advancement of expenses is permissible shall be made by any one of the following procedures:

7.8.1 Non-party Members' Vote. By a majority vote of the Members not at the time parties to the proceeding; or

7.8.2 Special Legal Counsel. By special legal counsel selected by a majority vote of the Members not at the time parties to the proceeding.

7.9 Court Determination of Indemnification. A Person who is a party to a proceeding may apply for indemnification from the Company to the court, if any, conducting the proceeding, or to another court of competent jurisdiction. On receipt of an application, the court, after giving notice, that the court considers necessary or advisable, may order indemnification if it determines:

7.9.1 Prevailing Party. In a proceeding in which the Person is the prevailing party and is wholly successful, on the merits or otherwise, that Person is entitled to indemnification under Article 7, and the court therefore shall Order the Company to pay the Person's reasonable expenses incurred to obtain the court ordered indemnification; or

7.9.2 Equity. The Person is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the Person met the Standard of Conduct set forth in Section 7.7.

7.10 Employee Benefit Plan. Indemnification shall also be provided for a Person's conduct with respect to an employee benefit plan if the Person reasonably believed the Person's conduct to be in the best interests of the participants in and beneficiaries of the plan.

7.11 Non-Exclusive Rights or Remedies. Nothing contained in this Article 7 shall be construed as an exclusive right or remedy or to limit or preclude any other right under the law, by contract or otherwise, regarding indemnification of or advancement of expenses to any Person or other individual who is serving at the Company's request as a Director, Officer, Partner, Manager, Trustee, Employee, or Agent of another foreign or domestic company, partnership, association, limited liability company, corporation, joint venture, trust, employee benefit plan, or other enterprise, whether for-profit or not.

7.11.1 No Limitation. Nothing contained in this Article 7 shall limit the ability of the Company to indemnify and/or advance expenses to any individual other than as provided herein.

7.11.2 Intent. It is the intent of this Article 7 to provide indemnification to Persons to the fullest extent now or hereafter permitted by law and consistent with the terms and conditions of this Article 7.

7.11.3 Legal Theory. Indemnification shall be provided in accordance with this Article 7 irrespective of the nature of the legal or equitable theory upon which a claim is made, including, without limitation, negligence, breach of duty, mismanagement, waste, breach of contract, breach of warranty, strict liability, violation of federal or state securities law, violation of the Employee Retirement Income Security Act of 1974, as amended, or violation of any other state or federal law.

7.12 Definitions. For purposes of this Article 7:

7.12.1 The term "expenses" includes all direct and indirect costs (including without limitation counsel fees, retainers, court costs, transcripts costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or out-of-pocket expenses) actually incurred in connection with the investigation, defense, settlement, or appeal of a proceeding or in establishing or enforcing a right to indemnification under this Article, applicable law, or otherwise.

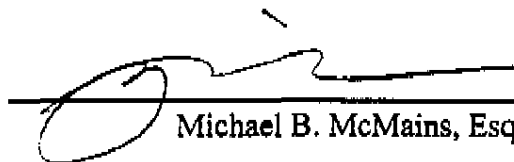
7.12.2 The term "liability" means the obligation to pay a judgment, settlement, penalty, fine, excise tax (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses incurred with respect to a proceeding.

7.12.3 The term "party" includes an individual who was, is, or is threatened to be made, a named defendant or respondent in a proceeding.

7.12.4 The term "proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil or criminal, administrative or investigative, and whether formal or informal.

On this 12th day of April, 1999 and in accordance with I.C. 23-18-2-4(a), the undersigned organizer hereby executes these Articles of Organization of LMS Spectrum Partners, LLC:

ORGANIZER



Michael B. McMains, Esq.

This document was prepared by Michael B. McMains, Esq., McMains, Goodin & Orzeske, P.C., 20 N. Meridian Street, Suite 9000, Indianapolis, IN 46204, (317) 638-7100.

EXHIBIT

C

PROGENY LMS, LLC

OPERATING AGREEMENT

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STATE OF INDIANA)
) SS: IN THE MARION _____ COURT
COUNTY OF MARION) CIVIL DIVISION
CAUSE NO. _____

OTTO N. FRENZEL, III and
PROGENY LMS, LLC,

Plaintiffs,

v.

CURTIS L. JOHNSON and
PROGENY POST, LLC,

Defendants.

AFFIDAVIT OF JOHN H. BARNARD

John H. Barnard, being first duly sworn upon his oath, deposes and states as follows:

1. I am one of several owners in Progeny Post, LLC ("Progeny"). The majority of Progeny's voting interest is owned by Curt Johnson ("Johnson"), and Otto N. Frenzel, III ("Frenzel") owns no more than 10% of the total ownership interest. Each of the several other members owns less than about 4% of the ownership interest. Johnson and I are the only members of Progeny's board of managers. Johnson is Progeny's president, and I was the company's chief financial officer until last year.

2. On a recent occasion, I had a conversation with Johnson about the status of certain efforts by Frenzel, with Johnson's assistance, to purchase licenses from the Federal Communications Commission ("FCC") for a number of radio broadcast frequencies. I understood and presumed from prior communications with Frenzel and Johnson that the licenses purchased would belong to Frenzel, whether personally or through an entity owned and controlled by him, and not by Progeny or any other person. During the conversation, Johnson

told me that FCC regulations related to bidder income would prevent Frenzel from owning the licenses, and that Progeny instead would be the owner. This news surprised me, because I had never been part of any discussion or vote, either with Johnson as a manager and officer or the entire membership, concerning Progeny's purchase of the licenses in this manner.

3. I also have learned recently that sometime after March 22, 1999, Johnson came to Frenzel's office and tendered some sort of promissory note, purporting to be payable to Frenzel from Progeny, for more than \$1.8 million that Frenzel apparently paid to help secure the licenses. Neither the managers nor the members of Progeny have ever approved such a debt or note to Frenzel. As a manager, I would have been involved in any discussions among members, managers or officers concerning such a debt and note, both before and after the debt was incurred, and no such discussions were ever held. Also, to the best of my knowledge, Frenzel never asked for or accepted the note tendered by Johnson or any other similar note from Progeny.

VERIFICATION

I affirm, under the penalties for perjury, that the foregoing representations are true and correct.


John H. Barnard

EXHIBIT

F

Auction ID 21 LOCATION AND MONITORING		FCC Account No. 0211049154	
Applicant Progeny LMS, LLC			
Mail Address (No P.O. Boxes) 4220 S Franklin Rd			
City Indianapolis	State IN	ZIP Code 46239	
Applicant Classification <input type="checkbox"/> Individual <input type="checkbox"/> Joint Venture <input type="checkbox"/> Partnership <input type="checkbox"/> Trust <input type="checkbox"/> Corporation <input type="checkbox"/> Consortium <input type="checkbox"/> Association <input checked="" type="checkbox"/> LLC <input type="checkbox"/> Govt. Entity			
Applicant Status <input checked="" type="checkbox"/> Small Business <input type="checkbox"/> Minority owned business <input type="checkbox"/> 35 % Bidding Credit Eligibility <input type="checkbox"/> Woman owned business <input type="checkbox"/> Rural telephone company <input type="checkbox"/> None			
Markets and Frequency Blocks/Channels selected by applicant. SELECTED ALL 528 LICENSES			
Person(s) authorized to make or withdraw a bid (a) Curtis L Johnson (b) Lawrence R Green (c)			
Name of Person Certifying Curtis L Johnson		Title of Person Certifying C.E.O.	
Contact Person Curtis L Johnson		E-mail address curt@progeny.com	
Date Feb 4 1999 2:11PM	Telephone No. (317)955-5546	FAX No. (317)955-5550	
Initial Date Jan 25 1999 2:06PM	Resub Date Feb 4 1999 2:11PM	Date Last Change Feb 4 1999 2:11PM	

Application Certification

FILES EXIST

ATTACHMENTS

Type	Date	Description	Contents
Ownership	Jan 25 1999 12:17PM	FCC Attachment Exhibit A	4003 1.pdf
Other	Jan 25 1999 12:18PM	FCC Attachment Exhibit B	4003 2.pdf
Other	Feb 4 1999 2:11PM	FCC Attachment Exhibit C	4003 3.pdf

PROGENY LMS, LLC ATTACHMENTS TO FCC FORM 175 APPLICATION

Exhibit A: Applicant Identity and Ownership Information

We hereby certify that Progeny LMS, LLC is a Limited Liability Company whose sole member is Progeny Post, LLC. Both entities are organized under the laws of Indiana and have a business address of:

20 N. Meridian St.,
Indianapolis, IN 46204

Progeny Post, LLC is a Limited Liability Company with the following members who are all US Citizens. Only Curtis L. Johnson with 60.79% holds more than a 10% interest in Progeny Post, LLC.

Curtis L. Johnson	4220 S. Franklin Rd. Indianapolis, IN 46239
Otto N. Frenzel III	11330 Templin Rd. Zionsville, IN 46077
Jim Cornelius	1055 Park Place Zionsville, IN 46077
Brad Goff	310 Rumford Pointe Atlanta, GA 30350
Joe Luigs	2008 Burning Tree Lane Carmel, IN 46032
Jack Farr	5735 N. 400 W. Bargersville, IN 46106
Don Arbogast	7532 Brookview Circle Indianapolis, IN 46250
John Barnard	3616 Newhouse Pl. Greenwood, IN 46143
Anthony W. Packer	6927 Ancient Oak Lane Charlotte, NC 28277
John Hall	3855 Eagle Trace Dr Greenwood, IN 46143
Mike Flannery	8304 Honeyhill Rd. Laurel, MD 20723

Progeny Post, LLC also owns interests in the following entities, all of which are inactive and none of which hold FCC licenses or are applicants for any FCC licenses.

Entity Name	Ownership Percentage Held By Progeny Post, LLC
Progeny Post Entertainment, LLC	100 %
Progeny Post Kids, LLC	100 %
Progeny Post Matchpower, LLC	100 %
Progeny Post RotoSpace, LLC	100 %
Progeny Post Sports, LLC	100 %
LMS Comm.net, LLC	50 %
Gimme the Ball, LLC	100 %

PROGENY LMS, LLC
ATTACHMENTS TO FCC FORM 175 APPLICATION

Exhibit B: Agreements with Other Parties/Joint Bidding Arrangements

Although the Company has had discussions with several other companies in the telecommunications industry concerning potential strategic partnerships in a range of different general business categories, the Company has no agreements or arrangements and has had no discussions with any parties regarding bid pricing or bidding strategies for licenses in the upcoming auction.

PROGENY LMS, LLC
ATTACHMENTS TO FCC FORM 175 APPLICATION

Exhibit C: Status as a Very Small Business

Progeny LMS, LLC certifies that it qualifies as a very small business. The applicant was established as an entity on July 2, 1996 but has been inactive and has had no revenue to date.

Progeny LMS, LLC	Gross Revenues
1996	\$0
1997	\$0
1998	\$0
Average for the preceding 3 years	\$0

Progeny Post, LLC, as the sole owner in Progeny LMS, LLC, also certifies that it qualifies as a very small business. Progeny Post, LLC was established as an entity on April 17, 1996 to develop business opportunities in several different areas and to date has had only minimal gross revenues for the last three years as follows:

Progeny Post, LLC	Gross Revenues
1996	\$498.00
1997	\$14,320.00
1998	\$0
Average for the preceding 3 years	\$4,939.33

None of the entities in which Progeny Post, LLC has an equity interest has had any revenue in the preceding three years.

EXHIBIT

G

PAGE 8

STATEMENT OF TRANSACTIONS

DATE 02/28/99

ACCOUNT NUMBER: 20-2493-00-8

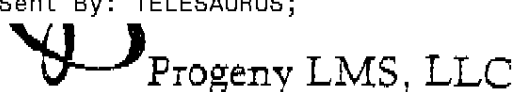
ACCOUNT NAME: FRENZEL, OTTO H III CUSTOMER

ADMINISTRATIVE OFFICER: PPT

DATE	DESCRIPTION	INCOME CASH	PRINCIPAL CASH	ASSET CARRYING VALUE
02/08/99	SOLD 500946.720 UNITS @ 1.00000 ARIZONA TAX EXEMPT MONEY MARKET FUND			
	HIRED MELLOW PITTSBURGH ABA 043000261 FOR ACCT 910-0198 N/O FCC FFC AUCTIONPAY TJH 35-1993924 P/MT TYPE CODE ALNW FCC CODE 1 21 PAYER PROGENY LHS LLC LOCKBOX 8358410		1,079,155.00-	
02/09/99	SOLD 17110.460 UNITS @ 1.00000 ARIZONA TAX EXEMPT MONEY MARKET FUND			
	HIRED ALPINE BANK CAMBODALE CO ABA 102103407 CREDIT ACCT 4040715778 N/O CAMMICHAEL CONSTRUCTION INC PER DIRECTION			
02/18/99	SOLD 5000.000 UNITS @ 1.00000 ARIZONA TAX EXEMPT MONEY MARKET FUND			
	DELOITTE & TOUCHE PROFESSIONAL SERVICES 10/18/98 TO 1/22/99 INVOICE 006100471			
	MARY ANN FRENZEL REMITTANCE HCB C/A 460 99 1311 PER REQUEST			
02/11/99	SOLD 7475.000 UNITS @ 1.00000 ARIZONA TAX EXEMPT MONEY MARKET FUND			
	PITKIN COUNTY TREASURER PROPERTY TAX DUE 2/28/99 FIRST HALF SCHEDULE R015946			

EXHIBIT

H



March 24, 1999

Mr. Randy Tobias
Chairman Emeritus
Eli Lilly
500 East 96th St.
Suite 100
Indianapolis, IN 46240

Dear Mr. Tobias,

Nick Frenzel and I appreciated your interest in our wireless project, so I just wanted to drop you a line to fill you in on our progress and share a few thoughts with you. We have made significant progress in the last couple of months and want to sustain the momentum we have created as we pursue some critical strategic partners.

I believe the last time we spoke we were beginning to meet with wireless carriers to outline our solution to the FCC mandate on E911 location and were preparing to participate in the FCC auction of the LMS frequencies. We've now had several successful meetings with all of the top wireless communications companies regarding our solution, which has been well received. However, it had become evident during these meetings that a national footprint for our wireless network was critical to being considered seriously as a viable alternative. To be honest, we couldn't have hoped for a better outcome. After two weeks of bidding at the auction, which ended on March 5, we succeeded in securing nationwide coverage by acquiring 230 licenses (all major economic areas with populations of 500,000 or more) representing over 225 million pops. And at \$2.36 million (funded by Nick), the cost was significantly lower than we allocated in our Business Plan and Financial Projections.

Since the auction closed, we have received a number of positive and encouraging responses from many of the companies with whom we've met, which has confirmed how valuable a nationwide set of frequencies is to our prospective partners and our overall business plan. We have also had several additional opportunities since then to make presentations to potentially significant partners. However, while we have made good progress moving up the ladder in these organizations and have continued to have good dialogue, we are still a couple of steps away from the top decision maker in most companies. Reaching the right people at each company will be one of our top priorities now.


As you may recall, our business model relies heavily on strategic partnerships in several key areas. Now that we've finished with the auction process, another top priority is to begin finalizing the more critical pieces of our strategic partnership plan, with particular focus on the technology (Motorola, Alcatel, Qualcomm) and tower co-location (AT&T, Sprint, GTE, etc.) partners. We believe our strategic partnership model has some creative elements that potential partners will find quite attractive. The key features of this partnership model have been presented in general terms with several of the potential strategic partners, and they have all reacted positively to the concept. A short outline of the partnership model is attached.

I really appreciate the time you have spent with us and would like to thank you again for the effort you made on our behalf with Dan Hesse and Craig McCaw. At this juncture in the development of our business, your insight to and contacts in the industry would be invaluable to us. Your background and experience are exactly what we need to efficiently reach the next level. Your reaction to our strategic partnership plan and your comments on its feasibility in a large corporate setting would be particularly helpful as we begin our next level of negotiations. Calls from you on our behalf to a select group of additional companies would help strengthen our position with those companies where we are already well received at lower levels. I know you

are very busy, but we could really use your help. Of course, I would want to work out some form of compensation that would allow you to participate in the success we will have as a result of your efforts.

I would like the opportunity to discuss this further at your convenience. I hope everything is going well and you are enjoying all you are doing. Thanks again for your time and interest. I hope to be speaking with you soon.

Sincerely,


Curtis L. Johnson
President & CEO

Cc: Nick Frenzel

PROGENY LMS, LLC

Strategic Partnership Model

The following is a brief sketch of the organizational and financial models we have put together. Separate Limited Liability Companies will be established for spectrum, technology, co-location and manufacturing partners. Each company will receive licensing royalties on all revenue generated by Progeny LMS. The strategic partner in each company will receive a baseline equity position that will provide them a 35% internal rate of return on their "investment" which will consist of cash, services or some combination of both. In addition, each partner will receive an equity enhancement that will bring their effective position to 49% of the Company. The equity enhancement will be subject to a call by Progeny LMS within 5 years at a cost equal to one-half the strategic partner's investment. As a result of the equity enhancement, the actual return to the partner is significantly higher than the 35% baseline. Since the calculated return is based only on operational cash flows from the conservative revenue projected for Progeny LMS and does not include an exit payment as part of the valuation, the ultimate return is expected to be even higher.

The strategic partnership model will allow us to build out the infrastructure for the business at a dramatically lower cost than trying to buy and build all the pieces ourselves. Except for the spectrum partner, each partner will be contributing services whose internal costs are substantially lower than what it would cost us to purchase. Using a fixed royalty in a separate entity helps Progeny better manage its overall costs.

More detail on the Technology and Tower Co-Location partnership categories follows. This same format and concept is being used for the Spectrum and Manufacturing partnership categories.

Technology

Progeny LMS Contribution. Progeny agrees to contribute to LMS Technology Partners, LLC, its 50% ownership in LMS Comm.net, LLC that holds rights to the LMS technology and other related intellectual property. Progeny agrees to acquire the balance of the ownership in LMS Comm.net, LLC by paying the \$3.5 million option price exclusively available to Progeny. That remaining 50% will then be contributed to LMS Technology Partners, LLC as part of Progeny's contribution. Additionally, all work completed and in progress with respect to the upgrading of the technology will be transferred to LMS Technology Partners, LLC.

Technology Partner Contribution. The Technology Partner agrees to:

- Provide design and engineering services required to update the technology and produce a prototype to a demonstration level.
- Create a chip/chip set that can be incorporated into a wireless phone.
- Fund the cost of contract labor for original system programmers and engineers to support the refreshing process (estimated to be approximately \$250,000)
- Design all network infrastructure equipment and produce and manage specifications for all end-user equipment manufacturers.

The technology partner will have no responsibility for other costs to deploy the network, manufacture or install the equipment, develop the markets or build out other components of the infrastructure.

Valuation of Contributions. The Technology Partner's contribution will be valued on the following basis:

- A 35% internal rate of return over a five-year period will be used as the Technology Partner's return objective.
- The assigned cost of the Technology Partner's contribution will be based on the internal cost of its design and engineering time, including a fair and reasonable allocation of overhead, plus other direct costs, including the contract labor fees.
- Licensing fees of \$.125 per unit per month will be assumed for all location units.
- A reasonable penetration rate over a five-year period will be assumed for location units sold.

The equity allocation required to meet the 35% return objective will serve as the baseline equity of the Technology Partner. This baseline equity position will be adjusted to 49% during the recovery period term.

Tower Co-location

Progeny LMS Contribution. Progeny agrees to provide:

- Location functionality to the partner at a reduced price
- Licensing royalties on all other Progeny LMS location revenue
- Equity in this entity as outlined below
- Rights to the frequencies required by the sites of operating the system
- Installation, Maintenance and Management of the system's transmit sites
- Use of the technology for other location technologies that may be offered by the partner

Progeny also agrees to contribute to LMS Tower Partners, LLC all work completed and in progress with respect to the siting and location of its receive equipment. Progeny will execute a royalty licensing agreement with LMS Tower Partners for use of the towers in all applications being developed by Progeny. Additionally, Progeny LMS, LLC will execute agreements between LMS Tower Partners, LLC and its other location service partners in technology updating, spectrum management, product distribution and marketing. These agreements will provide for exclusive use of each partner's products and services in the deployment of the network and development of the location services.

Tower Partner Contribution. The Tower Partner agrees to:

- Provide rent free co-location on all partner owned/leased tower sites.
- Install and maintain all Progeny LMS receive equipment at the sites

The tower partner will have no responsibility for other costs to deploy the network, manufacture or install the equipment, develop the markets or build out other components of the infrastructure.

Valuation of Contributions. The Tower Partner's contribution will be valued on the following basis:

- A 35% internal rate of return over a five-year period will be used as the Tower Partner's return objective.
- The assigned cost of the Tower Partner's contribution will be based on the internal cost of its time for equipment installation and an estimate of the annual cost of its maintenance during the first five years of operation, net present valued at an annual rate of 20% including a fair and reasonable allocation of overhead, plus other direct costs.
- Licensing fees of \$.075 per unit per month will be assumed for all location units.
- A reasonable penetration rate over a five-year period will be assumed for location units sold.

The equity allocation required to meet the 35% return objective will serve as the baseline equity of the Tower Partner. This baseline equity position will be adjusted to 49% during the recovery period term.

Declaration

I, Warren Havens, declare under penalty of perjury that the text in the Reply above, and the following statement in this Declaration, are true and correct.

Soon after the auction of LMS licenses, subject of this Petition and this Reply, I visited the office of the attorney, Mike McMains, of Nick Otto Frenzel in Indianapolis. In attendance was Mr. Frenzel's attorney, Mike McMains, and a business advisor to Mr. Frenzel.

Also, for one session of the meeting, I was introduced to the son of Mr. Frenzel who, I was told, was considering getting involved in a principal position in Progeny. It was clear to me that he was not estranged from Mr. Frenzel, but on the contrary, was considering a principal role in Progeny.

Further, Mr. McMains and Mr. Frenzel, and said business advisor, explained to me various businesses owned or controlled by Mr. Frenzel including commercial real estate redevelopment, including the large building in which Mr. McMains had his offices where the meeting was held, in downtown Indianapolis. Mr. Frenzel's being a major interest holder and officer or director in some banks was also explained to me in said meeting.

Dated and submitted August 31, 2010,

A handwritten signature in black ink, appearing to read "Warren Havens", written in a cursive style.

Warren Havens

Certificate of Service

I, Warren Havens, hereby certify that I have, on this 31st day of August 2010, placed into the USPS mail system, unless otherwise noted, a copy of the foregoing *Reply to Opposition to Petition to Deny*, including all attachments and exhibits, with First-class postage prepaid affixed, to the following:¹⁵

Progeny LMS, LLC
2058 Crossing Gate Way
Vienna, VA 22181
ATTN Carson Agnew
(Courtesy copy only, not for purposes of service, to: cagnew@progenylms.com)

Squire, Sanders & Dempsey L.L.P.
Bruce A Olcott , Esq
1201 Pennsylvania Avenue, NW, Suite 500
Washington, DC 20004
ATTN Bruce Olcott
(Courtesy copy only, not for purposes of service, to: bolcott@ssd.com)

[Filed electronically. Signature on file.]

Warren Havens

¹⁵ The mailed copies being placed into a USPS drop-box today may not be processed by the USPS until the next business day.